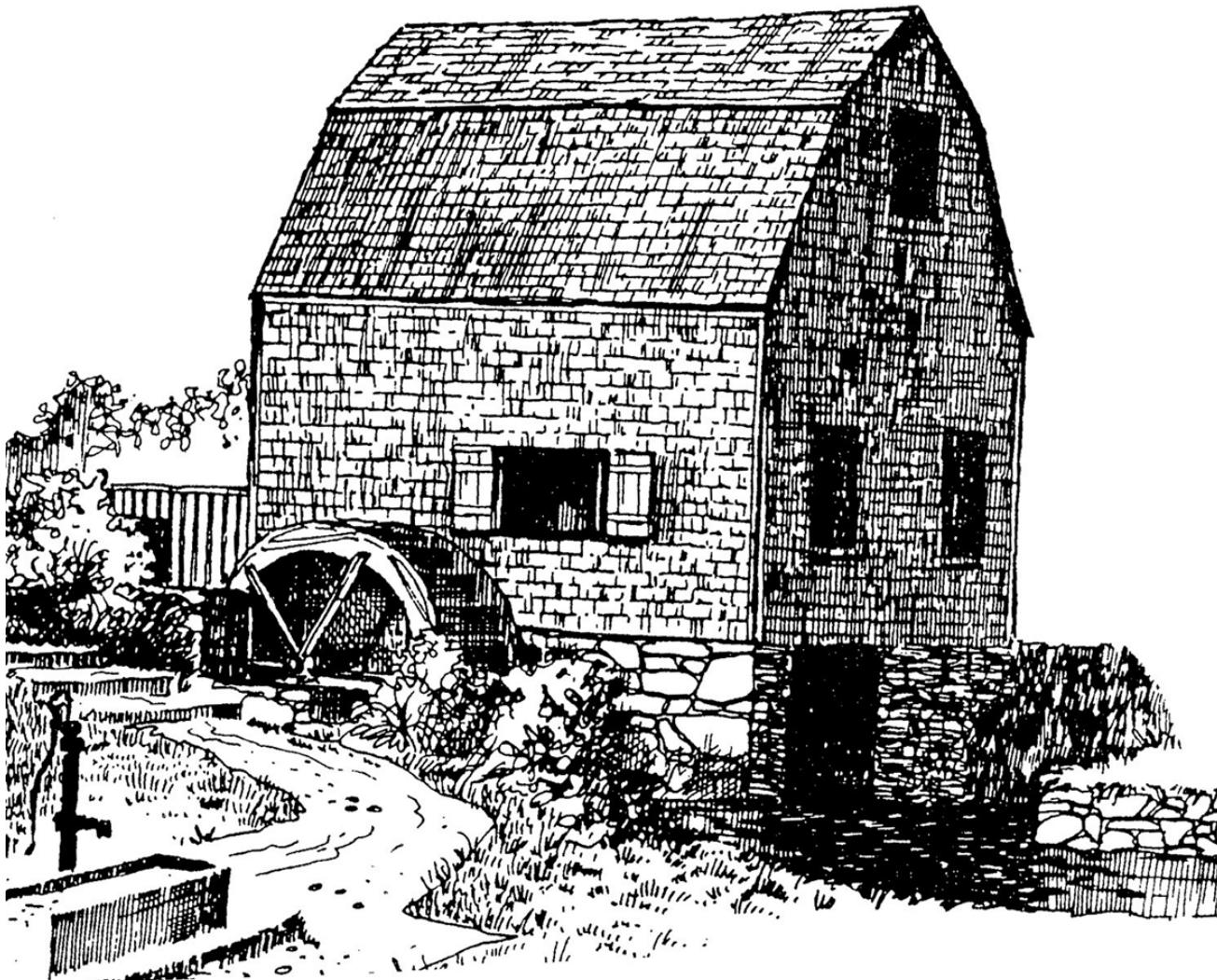


Town Of Sandwich

THE OLDEST TOWN ON CAPE COD



DEXTER GRIST MILL

PROTECTIVE ZONING BY-LAW

November 2017

Sandwich Protective Zoning By-laws

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(Superseded by Section 8050).

DEFINITIONS SECTION

ARTICLE I ADMINISTRATION AND PROCEDURE

1100. PURPOSE. The purpose of this by-law is to provide for the Town of Sandwich all of the protection authorized by the General Laws of the Commonwealth of Massachusetts, Chapter 40A and any amendments thereto - namely the promotion of the public health, safety, convenience and welfare by:

- a. Encouraging the most appropriate use of land;
- b. Preventing overcrowding of land;
- c. Conserving the value of land and buildings, including the conserving of natural resources and the preventing of blight and pollution of the environment;
- d. Lessening the congestion of traffic;
- e. Preventing undue concentration of population;
- f. Providing for adequate light and air;
- g. Reducing hazards from fire and other dangers;
- h. Assisting in the economical provisions of transportation, water, sewerage, schools, parks, and other public facilities;
- i. Encouraging housing for persons of all income levels;
- j. Preserving and increasing the amenities of the Town.

1200. ADMINISTRATION

1210. This by-law shall be administered by the Building Inspector.

1220. No **building permits** shall be approved except in compliance with this by-law. Sufficient information shall be submitted to demonstrate compliance, including a plot plan showing, in addition to those items required under Section 110.10 of the Massachusetts Building Code or the Massachusetts State Building Code applicable sections in effect at the time of application; two-foot contours across the entire lot, and full width of the street across the lot frontage, and sufficient data to determine compliance with parking, standing and loading, landscaping and erosion control, and other applicable provisions of this by-law. Prior to proceeding with construction above the foundation, a Registered Land Surveyor shall certify that the structure has been located in compliance with all yard requirements.

1230. No **certificate of use and occupancy** as required in Section 19.1 of the Commonwealth of Massachusetts Building Code shall be issued in violation of any provisions of the By-Law, and no use of land not requiring such certificate under the building code shall be initiated or changed without certification of use compliance by the Building Inspector.

1240. Enforcement. The Building Inspector shall institute appropriate legal proceedings to enforce the provisions of this by-law or to restrain by injunction any violation thereof, or both; and shall institute and take any and all such action as may be necessary to enforce full compliance with any and all provisions of this by-law.

1250. Violations. Any person violating any of the provisions of this bylaw or any condition of a special permit issued under this bylaw shall be fined not more than \$300.00 for each offense. Each violation and each day that such violation continues shall constitute a separate offense. (Amended STM 9/91). However, when enforcing bylaw offenses by the non-criminal disposition method (as described in Article 8, Section 3, of the Town of Sandwich By- Laws, the fine shall be as follows:

- a) First offense within the preceding twelve month period\$50.00.
- b) Second offense within the same twelve month period\$100.00.
- c) Third offense and each subsequent offense\$300.00.

1251. The **imposition of the penalties** herein prescribed shall not preclude the Building Inspector from instituting appropriate action to prevent unlawful construction or to restrain, correct or abate a violation, or to prevent illegal occupancy of a building, structure or premises or to stop an illegal act, conduct, business, or use of a building or structure in or about any premises.

1260. A performance bond or deposit of not less than \$12.00 per foot of lot frontage plus \$0.05 per cubic foot of foundation volume shall be required prior to authorization of any new structure or addition if, in either case, involving more than 200 square feet of floor area, as security against possible costs due to erosion or damage within street rights - of-way, or failure to enclose and backfill the foundation within the time period covered by the building permit, or failure to carry out any or all conditions mandated in a special permit granted by the Board of Appeals. Such bonds may also be required by the Building Inspector for site alterations not involving new structures but potentially incurring damage within street rights-of-way. These bonds shall be held by the Town

Treasurer until he is notified by the Building Inspector that all on-site work, as required under the building code and conditions of a special permit granted, and all movement of heavy equipment has been completed and any damage repaired.

1300. BOARD OF APPEALS

1310. The **Board of Appeals** shall consist of five members and four associate members, who shall be appointed by the Selectmen and act in all matters under this by-law in the manner prescribed by Chapter 40A of the General Laws as amended.

1320. The **Board of Appeals** shall have the following powers:

- a. To hear and decide appeals in accordance with Section 8, of Chapter 40A
- b. To hear and decide applications for Special Permits upon which the Board is empowered to act under this by-law.
- c. To hear and decide appeals from decisions of a zoning administrator, if any

1321. The Board of Appeals shall have the power, after a public hearing upon petition, to grant **variances** from the terms of this by-law with respect to particular land or structures, but only where such permit granting authority finds all of the following: (amended 5/4/98)

- a. A literal enforcement of the provisions of this bylaw would involve a substantial hardship, financial or otherwise, to the petitioner or appellant.
- b. The hardship is owing to circumstances relating to the soil conditions, shape, or topography of such land or structures but not affecting generally the zoning district in which it is located.
- c. Desirable relief may be granted without either:
 1. Substantial detriment to the public good; or
 2. Nullifying or substantially derogating from the intent or purpose of this by-law.

Before a variance may be authorized, the Board of Appeals shall, as required by Chapter 40A, Section 10 of the General Laws, find that all of the conditions of this section have been met. The Board of Appeals shall impose such limitations on time and use or such other conditions as it may deem desirable to protect the public interest and ensure that the variance granted is not greater in degree or duration than is justified by the hardship to be relieved. The Board of Appeals shall not impose conditions, safeguards or limitations based upon the continued ownership of the land or structures to which the variance pertains by the appellant, petitioner or any owner. The Board of Appeals shall record its findings in each case.

If the rights authorized by a variance are not exercised within one year of the date of grant of such variance, such rights shall lapse, provided however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period. If the permit granting authority does not grant such extension within thirty (30) days of the date of the application therefore, and upon the expiration of the original one year period, such rights may be reestablished only after notice and a new hearing pursuant to the provisions of this section. Variances granted prior to effective date of this ordinance but limited in time may be extended on the same terms and conditions that were in effect for such variance upon said effective date.

1321.1. Applications for **variances** shall include as part of the application to the Board of Appeals the following:

1. Completed application form
2. Written request for waiver of any submission requirements.
3. A site plan prepared to a scale of 1" = 40' minimum, by a Massachusetts Registered Architect, Landscape Architect, Civil Engineer or Land Surveyor, illustrating the shape and location of the proposed building(s) and proposed addition(s).
4. A written narrative describing the variance requested describing the circumstances relating to the soil conditions, shape or topography of such land or structures that do not generally affect the zoning district in which it is located.

The Board of Appeals is authorized, upon receipt of a written request, to waive specific submission requirements of Section 1321.1 if the Board of Appeals deems a particular requirement to be duplicative or unnecessary. The granting of such waivers shall be deemed by the Board of Appeals to be in the public interest. The Board of Appeals shall include a written description of the waivers granted within the decision on the application.

Applications may be submitted electronically or by hard copy. The Department of Planning & Development is authorized to require up to ten (10) hard copies of all materials.

1321.2. Referral. The Board of Appeals shall refer variance applications to the Board of Health, Water Quality Review Committee, Conservation Commission, Planning Board, Department of Public Works, and Town Engineer for written comments and recommendations pertaining to the area of responsibility of that particular board or department, before taking final action on said variance application.

In addition to the above noted boards, the Board of Appeals may refer a variance application to any other Town agency/board/department for comments and recommendations if it so desires before taking final action on the variance application.

Any such board or agency to which applications are referred to for comments shall make its recommendations and send copies thereof to the Board of Appeals and the applicant within twenty (20) days of receipt of the referral request by said board or agency or there shall be deemed no opposition or desire to comment.

The Board of Appeals shall not act upon said variance until either comments from referred boards or agencies have been received, or twenty (20) days have elapsed, whichever is sooner.

1330. Special Permits shall normally be granted unless, because of conditions peculiar to the particular case but not generally true for similar permitted uses on other sites in the same district, it appears that nuisance, hazard or congestion will be created, or for other reasons there will be substantial harm to the neighborhood or derogation from the intent of the by-law, so that the stated district objectives will not be satisfied. The Special Permit Granting Authority shall place upon each special permit the condition that failure to comply with the conditions set forth in the special permit will result in termination thereof and that it shall expire upon transfer of ownership, prior to initiation of substantial construction on or occupancy of the site, unless such transfer is authorized in the permit, or if no substantial construction or occupancy takes place within the twelve (12) months of special permit approval, excluding such time required to pursue or await the determination of an appeal referred to in Section 17 of Chapter 40A. Extenuating circumstances may be a basis for a six (6) month extension to be granted by the Special Permit Granting Authority. Construction or operations under a building or special permit shall conform to any subsequent amendment of the ordinance or by-law unless the use or construction is commenced within a period of not less than twelve (12) months after the issuance of the permit and, in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

1331. Special permits shall only be issued following **public hearings** held within sixty-five (65) days after filing of an application with the Special Permit Granting Authority. A copy of the application shall be given to the Town Clerk forthwith by the applicant.

1332. Referral. The Special Permit Granting Authority (SPGA) shall refer special permit applications to the Board of Health, Water Quality Review Committee, Conservation Commission, Housing Authority, Planning Board, Board of Appeals, Highway Department, and Town Engineer for written comments and recommendations pertaining to the area of responsibility of that particular board or department, before taking final action on said special permit application. In addition to the above noted boards, the SPGA may refer a special permit application to any other Town agency/board/department for comments and recommendations if it so desires before taking final action on said special permit application. A public hearing on said referral shall not be required. The SPGA need not send a referral to itself.

Any such board or agency to which applications are referred to for comments shall make its recommendations and send copies thereof to the SPGA and the applicant within thirty-five (35) days of receipt of the referral request by said board or agency or there shall be deemed no opposition or desire to comment. The SPGA shall not act upon said special permit until either comments from referred boards or agencies have been received, or said thirty-five (35) days have elapsed, whichever is sooner. Applications referred to more than one board or agency may be reviewed jointly by said boards or agencies.

1340. Applications for special permits and amendments to special permits shall include as part of the application to the Special Permit Granting Authority the following:

1. Completed application form;
2. Written request for waiver of any submission requirements;
3. Photographs of premises and all adjoining structures;
4. A site plan prepared to a scale of 1" = 40' minimum, by a Massachusetts Registered Architect, Landscape Architect, Civil Engineer or Land Surveyor, illustrating:
 - a) The shape and location of the proposed building(s) and proposed addition(s).
 - b) Vehicular and pedestrian circulation.
 - c) Proposed parking including service vehicles.

- d) Entranceways, roadways, sidewalks and loading areas.
- e) The general extent and nature of proposed cutting of natural vegetation and proposed planting and landscaping of disturbed areas.
- f) The general intentions for proposed utilities, the location and size of septic tanks and leaching fields and the handling of surface drainage.
- g) The general location and types of outdoor signs.
- h) The general location and intent of outdoor lighting.
- i) The general location and type of outdoor storage, fencing and screening.
- j) Principal elevation at a scale of 1/16" = 1' minimum, showing:
 - 1. The general massing and height of the proposed facility, and
 - 2. Any special heating, ventilation and mechanical requirements impacting the exterior.

Applications may be submitted electronically or by hard copy. The Department of Planning & Development is authorized to require up to ten (10) hard copies of all materials.

1341. The SPGA is authorized, open receipt of a written request, to waive specific submission requirements of Sections 1330 through Sections 1370 if the SPGA deems a particular requirement to be duplicative or unnecessary. The granting of such waivers shall be deemed by the SPGA to be in the public interest. The SPGA shall include a written description of the waivers granted within the decision on the application. When an application is made to the Board of Appeals and information required under section 1340 is submitted, **the Board of Appeals shall forthwith transmit such information to the Planning Board and Town Engineer for review and recommendations.** Those two agencies shall make their reviews and such recommendations and shall send copies to the Board of Appeals and the applicant within thirty-five (35) days of receipt of the application by each of the aforementioned agencies, provided that failure to make recommendations shall be deemed to be a lack of opposition.

1342. In acting on special permits and special permit amendments under this section, **the Board of Appeals shall give consideration to the recommendations, if any, of the Planning Board and the Town Engineer.** These recommendations shall be formulated considering the following criteria:

- a) Protection of adjacent area against detrimental or offensive uses on the site by provision of adequate surface water drainage, buffers against lighting, sight, sound, dust, vibration, odor and allowance of sunlight and air;
- b) Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent areas;
- c) Adequacy of facilities for handling and disposal of refuse and other production by-products;
- d) Protection of environmental features on the site and in adjacent areas;
- e) Promotion of appropriate arrangement of structures within the site and in relation to existing structures within the district and neighborhood;
- f) Co-ordination with and improvement of systems of vehicular and pedestrian access, drainage, water supply, sewage disposal, lighting, landscaping, wetlands, water courses, buildings and others features that support the neighborhood;
- g) Compliance with all applicable sections of the Zoning By-Law.

1350. **Repetitive petitions** for appeals and petitions for variances, and application to the Special Permit Granting Authority or Permit Granting Authority shall be limited as provided in Section 16, of Chapter 40A, M.G.L.

1360. All applications or petitions to the Special Permit Granting Authority or Permit Granting Authority, if involving erection or **change in exterior dimensions of any structure or parking area**, shall be accompanied by a plot plan as specified in Section 1220 for building permit applications. Such plans shall also be submitted in other cases when deemed necessary by the Board for its determinations. All applicants or petitioners shall appear at or be represented by a spokesman at the public hearing upon their application or petition, or the Board may dismiss the application for lack of sufficient information.

1370. **The Zoning Board of Appeals shall act as the Board of Appeals under the Subdivision Control Law,** with the authority to issue withheld building permits as provided in Section 81-Y, Chapter 41, and M.G.L.

1380. Special Permit Issued for Protection of Drinking Water Resources:

Where specified in Section 2300 by the letters "SA", the Board of Appeals shall act as the Special Permit Granting Authority in accordance with this section. Such special permits shall be granted if the Board of Appeals determines that the intent of this by-law, as well as the specific criteria of Sections 1381 and 1390 are met. In making this determination, the Board of Appeals shall give consideration to the simplicity, reliability, and feasibility of the

control measures proposed and the degree of threat to water quality, which would result if the control measures failed.

1381. Special Permit Criteria. The Board of Appeals shall issue special permits only if the Board determines that groundwater quality resulting from on-site waste disposal and other on-site operations will not fall below federal or state or town (added ATM 92) standards for drinking water or, if existing groundwater quality is already below these levels, on-site disposal will result in no further deterioration.

1382. Submittals. In applying for a special permit under section 1380, the information listed below shall be submitted by the applicant in accordance with Section 1331.

- a) A complete list of all chemicals, pesticides, fuels, and other potentially toxic or hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use, accompanied by a description of measures proposed to protect all storage containers/facilities from vandalism, corrosion, and leakage, and to provide for control of spills.
- b) A description of potentially toxic or hazardous wastes.
- c) Evidence of approval by the Massachusetts Department of Environmental Protection (DEP) of any industrial waste treatment or disposal system or any wastewater system over 15,000 gallons per day capacity.
- d) For underground storage of toxic or hazardous materials, evidence of qualified professional supervision of system design and installation.
- e) Analysis certifying compliance with Section 1381, such analysis to be done by a Massachusetts Registered Civil, Sanitary, Chemical or Industrial Engineer.

1390. Design and Operations Guidelines. Except for single-family dwellings not being used in connection with a home occupation, the following design and operations guidelines shall apply to special permits granted under Section 1380:

- a) **Safeguards.** Provisions shall be made to protect against toxic or hazardous materials discharge or loss resulting from corrosion, accidental damage, spillage, or vandalism through measures such as: spill control provisions in the vicinity of chemical or fuel delivery points; secured storage area for toxic or hazardous materials; and indoor storage area for toxic and hazardous materials; and indoor storage provisions for containers which are corrodible or dissolvable. For operations, which allow the evaporation of toxic or hazardous materials into the interiors of any structures, a closed vapor recovery system shall be provided for each such structure to prevent discharge of contaminated condensate into the groundwater.
- b) **Disposal.** For any toxic or hazardous materials to be produced in quantities greater than those associated with normal household use, the applicant must demonstrate the availability and feasibility of disposal methods, which are in conformance with Chapter 21c, MGL.
- c) **Drainage.** All runoff from impervious surfaces shall be recharged on the site, diverted towards areas covered with vegetation for surface infiltration to the extent possible. Dry wells shall be used only where other methods are infeasible, and shall be preceded by oil, grease, and sediment traps to facilitate removal of contaminants.

1400. AMENDMENT. This by-law may be changed by amendment, addition or repeal in the manner provided in Section 5, Ch. 40A, G.L.

1500. VALIDITY. The invalidity of any section or provision of this by-law shall not invalidate any other section or provision thereof.

1600. APPLICABILITY. Where the application of this by-law imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants or agreements, the provisions of this by-law shall control.

1700. EFFECTIVE DATE .The effective date of the adoption or amendment of any Zoning By-Law shall be the date on which such adoption or amendment was voted upon by Town Meeting.

ARTICLE II

USE AND INTENSITY REGULATIONS

2100. ESTABLISHMENT OF DISTRICTS

2110. For the purposes of this by-law, the Town is divided into the following Districts:

a) Residential Districts	R-1 and R-2
b) Ridge District	RD
c) Shore District	S
d) Business Districts	BL-1, B-2 and VIL
e) Marine District	MAR
f) Flex District	FLEX
g) Industrial District	IND
h) Government District	GD
i) Adult Entertainment Overlay District	
j) Flood Plain Overlay District	
k) Parking Overlay District	
l) Surface Water Protection Overlay Districts	
m) Three Ponds Overlay District	
n) Water Resource Overlay Districts	
o) Wireless Telecommunications Overlay Districts	
p) Ground Mounted Solar Overlay District	

The boundaries of these districts are defined and bounded on the map entitled "Zoning Map, Sandwich, Massachusetts," dated and revised April 24, 1978, as amended May 1 and 2, 1978 (Articles 12, 13, and 14), May 4, 1981 (Article 31), May 19, 1986 (Article 9), revised November, 14, 1988 (Article 33), revised May 24, 1989 (Article 26), revised May 1, 2000, (Article 31), revised March 19, 2001(Article 2) and as amended and revised through May 7, 2001and as further amended and revised through May 6, 2002 (Article 31) and as further amended on March 21, May 2, 2005, October 2009 and May 2013 on file with the Town Clerk. The map and all explanatory matters thereon are hereby made part of this by-law. Overlay districts shall be superimposed on other districts established in this by-law.

Adult Entertainment Overlay District, as described in Section 3920, is herein established as an overlay district and shall be superimposed on other districts established in this bylaw.

Flood Plain District, as described in Section 4310, shall be considered to be superimposed over any other district established by this by-law. Land in a Flood Plain District shall be subject to the requirements of Section 4300.

Parking Overlay District, as described in Section 3111, shall be considered to be superimposed over any other district established by this by-law. Land in the Parking Overlay District shall be subject to the requirements of Section 3112.

Surface Water Protection District, which comprises the area within 300 feet of any surface water pond as described in Sections 3610 and 5120, shall be considered superimposed over any other district established by this bylaw. Land in a Surface Water Protection District shall be subject to the requirements of Section 5100. (Added STM 9/91).

Water Resource Overlay District, as described in Section 5010, shall be considered to be super-imposed over any other district established by this by-law. Land in a Water Resource Overlay District shall be subject to the requirements of Section 5000.

Wireless Telecommunications Overlay District, as described in Section 3820 is herein established as an overlay district and shall be superimposed on other districts established in this Zoning By-law. New telecommunications facilities that are constructed exclusively for the purpose of transmitting and receiving television, AM/FM radio, digital, microwave, cellular, telephone or similar forms of electromagnetic radiation must be located within the Wireless Telecommunications Overlay District.

Ground Mounted Solar Overlay District, as described in Section 4180 is herein established as an overlay district, shall be considered to be superimposed over any other district established by this by-law. Land in the Ground Mounted Solar Overlay District shall be subject to the requirements of Section 4180.

2120. Except when labeled to the contrary, district boundary lines shown approximately following or terminating at

street, railroad, or utility easement center of layout lines, boundary or lot lines, or the channel of a stream, shall be construed to be actually those lines; when shown approximately parallel, perpendicular, or radial to such lines, boundaries shall be construed to be actually parallel, perpendicular or radial thereto; when appearing to follow shoreline, boundaries shall coincide with the mean low-water line. When not locatable in any other way, boundaries shall be determined by scale from the map; and

2130. Where a district boundary line divides any lot existing at the time such line is adopted, the regulations for the less restricted portion of such lot shall extend not more than thirty feet into the more restricted portion of such lot, provided the lot has street frontage in the less restrictive district.

2140. DISTRICT PURPOSES ARE AS FOLLOWS:

1. **Business Limited (BL-1)**
To provide for moderately dense limited commercial mixed-use, village-style development with local and transient services; while preserving or enhancing ocean views from highways, protecting character of historic environs, preserving or enhancing landscaping, minimizing visibility of parked autos and avoiding creation of hazards or congestion.
2. **Business (B-2)**
To provide for mixed-use of moderately dense residential, business, technological, limited entertainment, athletic and commercial uses including formal streetscapes as well as civic uses and public open space in a village style atmosphere.
3. **Village Business District (VIL)**
To ensure the preservation or enhancement of historic villages or similar areas by regulating mixed land use to accommodate residential, cultural, commercial and hospitality uses.
4. **Flexible Growth District (FLEX)**
To provide for uses that will be appropriate in scale and compatible with the Town's character while meeting the needs of the local and regional economy. Flexible use of land and space for light manufacturing and industrial, research and development, office and business, entertainment or athletic and regional commercial and retail space shall be permitted while enhancing landscaping and avoiding creation of hazards or congestion.
5. **Industrial Limited (IND)** - To preserve uniquely serviced areas for exclusive Industrial or commercial use, while providing a visually pleasing landscaped areas compatible with the Town's history.
6. **Marine (MAR)**
To encourage a mixture of marine, aquaculture, limited commercial, limited industrial and recreational uses that exist in concert with and respect the environs of the Cape Cod Canal, Cape Cod Bay and Sandwich Harbor.
7. **Residence (R-1)**
To provide moderate-density residential development and allow for a limited variety of accessory uses, while preserving current surrounding conditions and the environment of the community.
8. **Residence (R-2)**
To provide for lower-density residential development for those uses allowed in the R1 zone while protecting the quality of air, surface water and ground water of the area.
9. **Ridge (RD)**
To provide for flexible development of large-scale tracts allowing development for regional service and athletic recreation near expressway interchanges and to allow variety and choice in residential development; at the same time preserving or enhancing views of Cape Cod Bay from public ways; preserving or enhancing landscaping and tree cover; and minimizing visibility of parked autos, avoiding creation of hazards or congestion and assuring compatibility with low density residential development.
10. **Shore (S)**
To provide for moderately dense or clustered residential and hospitality development with accessory uses while preserving the character, views and ecology of oceanfront land.

11. **Government District (GD)**

Provide for necessary governmental functions, public recreation and conservation on publicly owned land.

2200 USE REGULATIONS

No lot shall be used and no building, structure or addition to a structure shall be erected except as set forth in the Use Regulation Schedule, or as exempted by G. L. c. 40A, §6 or by the granting of special permit or variance. Symbols employed shall mean the following:

2210 Y- Permitted by-right *;

S- Uses authorized under special permit as provided for in **Section 1330**

N- Excluded or prohibited;

SA- Uses authorized under special permit as provided for in **Section 1380**

Agricultural Uses												
	R-1	R-2	VIL (2,3)	BL-1 (2,3)	B-2	FLEX	IND	MAR (2,3)	RD	S	GD	
Farm	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Farm Stand	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Aquaculture Operations	S	S	S	S	N	N	Y	Y	N	S	N	
Brewery, Winery, Distilleries	N	S	S	Y	Y	Y	Y	Y	S	N	N	
Commercial Uses												
	R-1	R-2	VIL (2,3)	BL-1 (2,3)	B-2	FLEX	IND	MAR (2,3)	RD	S	GD	
Adult Entertainment	N	N	N	N	N	S(4)	N	N	N	N	N	
Animal Kennel	N	N	N	N	N	Y	N	N	N	N	N	
Artist Studios	N	N	S	Y	Y	Y	N	S	S	S	N	
Automotive Repair	N	N	N	N	N	SA	SA	N	N	N	N	
Bank	N	N	S	Y	Y	Y	N	S	N	N	N	
Beauty Salon/Barbershop	N	N	S	Y	Y	S	N	N	N	N	N	
Bed and Breakfast (5)	S	S	S	S	S	N	N	N	S	S	N	
Boat/Motor Vehicle Service/Repair	N	N	N	SA	SA	SA	SA	SA	N	N	N	
Boat/ Watercraft Sales, Wholesale (8)	N	N	N	N	N	Y	Y	Y	N	N	N	
Boat and Watercraft Storage Building	N	N	N	N	N	S	S	Y	N	N	N	
Car Wash	N	N	N	SA	SA	SA	N	N	N	N	N	
Childcare Facility	Y	Y	S	Y	Y	Y	N	Y	Y	Y	N	
Commercial and Charter Fishing	N	N	S	N	N	N	S	Y	N	N	N	
Commercial/Recreational Marine Equipment Storage (6)	N	N	N	N	N	Y	Y	Y	N	N	N	

Convenience Store, Retail	N	N	S	Y	Y	Y	N	S	N	N	N
Crematorium	N	N	N	N	N	S	N	N	N	N	N
Dry Cleaning	N	N	N	SA	SA	SA	N	N	N	N	N
Fast Food, Takeout (2)	N	N	N	YY	YS	YN	N	N	N	N	N

	R-1	R-2	VIL (2,3)	BL-1 (2,3)	B-2	FLEX	IND	MAR (2,3)	RD	S	GD
Funeral Home	N	N	S	SA	SA	SA	N	N	N	N	N
Gasoline Station	N	N	N	S	S	S	SA	SA	N	N	N
Holiday Seasonal Attraction	S	S	S	S	S	S	N	S	S	N	N
Hotel/ Motel	N	N	S	S	S	S	N	S	S	N	N
Major Commercial Complex	N	N	N	N	S	S	N	N	N	N	N
Major Industrial Complex	N	N	N	N	N	S	S	N	N	N	N
Marine Medical and Rehab Facility	N	N	N	N	N	N	N	Y	N	N	N
Medical Offices (21) (No surgical procedures)	N	N	S	Y	Y	Y	N	N	S	N	N
Medical Offices (21) (Outpatient surgical procedures)	N	N	S	Y	Y	Y	N	N	S	N	N
Motor Vehicle Rental Establishment	N	N	N	S	N	S	N	N	N	N	N
Motor Vehicle Sales, Wholesale (8)	N	N	N	N	N	S	N	N	N	N	N
Office, Professional	N	N	S	Y	Y	Y	N	Y	N	N	N
Other retail business or service	N	N	S	S	S	S	N	S	N	N	N
Research Laboratory	N	N	N	N	N	Y	N	Y	SA	N	N
Restaurant	N	N	S	Y	Y	S	N	Y	N	S	N
Retail Sales/Service, Minor	N	N	S	Y	Y	Y	N	N	N	N	N
Retail Sales/Service, Major	N	N	N	Y	Y	Y	N	N	N	N	N
Retail Sales/Service, Regional	N	N	N	N	S	S	N	N	N	N	N
Supermarket	N	N	N	Y	Y	Y	N	N	N	N	N
Tattoo/Body Art Establishment	N	N	N	N	N	N	N	S	N	N	N
Technology Business or Service	N	N	S	Y	Y	Y	N	S	N	N	N

Terminal, Bus or Rail	N	N	N	N	S	S	N	S	N	N	N
Terminal, Ferry/Waterbus	N	N	N	N	N	N	N	Y	N	N	N
Terminal, Trucking	N	N	N	N	N	S	S	N	N	N	N
Veterinary Office or Hospital	N	N	S	Y	Y	Y	N	N	N	N	N
Warehouse Sales, Wholesale and Retail	N	N	N	N	N	S(7)	N	N	N	N	N

Industrial/Utility Uses												
	R-1	R-2	VIL (2,3)	BL-1 (2,3)	B-2	FLEX	IND	MAR (2,3)	RD	S	GD	
Bulk Storage/Warehouse (9)	N	N	N	N	N	S	S	N	N	N	Y	
Contractors Yard	N	N	N	N	N	Y	Y	N	S	N	Y	
Disposal and Recycling Facility	N	N	N	N	N	SA (10,11)	N	N	N	N	SA (10)	
Earth Removal	N	N	N	N	N	S	N	N	N	N	N	
Hazardous Waste Facility	N	N	N	N	N	SA (11)	SA (11)	N	N	N	N	
Heliport	N	N	N	N	N	S	N	S	N	N	Y	
Manufacturing, Light	N	N	N	N	N	Y	S	S(12)	N	N	N	
Metal Plating (13)	N	N	N	N	N	SA (11)	N	N	N	N	N	
Power Generation, Electrical	N	N	N	N	N	SA	SA (14)	SA (14)	N	N	N	
Research laboratory, Chemical, Bacteriological lab	N	N	N	N	N	SA	N	SA	SA	N	SA	
Sanitary Landfill	N	N	N	N	N	SA (11)	N	N	N	N	N	
Sale, Storage or Distribution of Fuel Oil or Gasoline	N	N	N	SA	SA	SA	SA	SA	N	N	N	
Seafood/Fish Processing Facility	N	N	N	N	N	Y	N	Y	N	N	N	
Solar Photovoltaic Installation, Large-Scale Ground Mounted (22)	N	S	N	N (25)	N	Y	Y	N	S	N	S	
Telecommunications Facility, Wireless (15)	N	S	N	N	N	S	S	S	S	N	S	
Use of toxic or hazardous materials in quantities greater than associated with normal household or agriculture use (13)	N	N	N	SA	SA	SA	SA	SA	SA	N	SA	
Wastewater Treatment Facility (17)	SA	SA	N	SA	SA	SA	SA	SA	SA	SA	SA	
Wastewater Effluent Disposal (16)	SA	SA	N	SA	SA	SA	SA	SA	SA	N	SA	

	Institutional											
	R-1	R-2	VIL (2,3)	BL-1 (2,3)	B-2	FLEX	IND	MAR (2,3)	RD	S	GD	
Assisted Living Facility	N	S	S	S	Y	N	N	N	S	N	N	
Animal Rescue / Adoption	S	S	N	S	S	S	N	S	S	N	N	
Cemetery	N	S	N	N	N	N	N	N	N	N	N	
Continuing Care Retirement Community	N	S	S	S	Y	N	N	N	S	S	N	
Hospice Care Facility	N	S	S	Y	Y	N	N	N	S	N	N	
Hospital	N	N	N	S	S	S	N	N	S	N	N	
Municipal Uses	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Museum	Y	Y	Y	Y	Y	N	N	Y	Y	Y	N	
Philanthropic Institutions	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	N	
Rehabilitation Hospital	N	N	N	N	S	N	N	N	S	N	N	
Religious Uses	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
School- Public, Sectarian, Denominational, Non-profit Educational Corp.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	

	Recreational/Cultural Uses											
	R-1	R-2	VIL (2,3)	BL-1 (2,3)	B-2	FLEX	IND	MAR (2,3)	RD	S	GD	
Amusement Park/ Water Park	N	N	N	N	N	N	N	N	N	N	N	
Art Gallery	S	S	S	Y	Y	S	N	S	S	S	N	
Bowling Alley	N	N	N	N	Y	Y	N	N	N	N	N	
Campground	S	S	N	N	N	N	N	N	S	N	N	
Cinema	N	N	N	N	Y	Y	N	N	N	N	N	
Game Room	N	N	N	N	Y	N	N	N	N	N	N	
Golf Course	N	S	N	N	N	N	N	N	S	N	N	
Health Club	N	N	N	Y	Y	Y	N	S	S	N	N	
Marina	N	N	N	N	N	N	N	Y	N	N	N	
Mini Golf	N	N	N	S	Y	S	N	N	S	N	N	
Recreation Facility, Indoor	N	N	N	N	Y	S	N	N	S	N	N	
Recreation Facility, Outdoor	S	S	N	N	S	S	N	S	S	N	N	
Riding School (18)	N	S	N	N	N	N	N	N	S	N	N	

Social Club	N	S	S	Y	Y	Y	N	Y	S	N	N
Spa	S	S	S	Y	Y	N	N	N	S	S	N
Sportsmans' Club, Game Reserve, Rifle/Gun Range	N	S	N	N	N	Y	N	N	S	N	N
Theatre	S	N	S	Y	Y	Y	N	N	S	N	N
Zoo/ Menagerie/ Aviary	N	N	N	N	N	N	N	N	N	N	N

Residential

	R-1	R-2	VIL (2,3)	BL-1 (2,3)	B-2	FLEX	IND	MAR (2,3)	RD	S	GD
Cluster Development	S	S	S	N	S	N	N	N	S	S	N
Cottage Colony	S	S	N	S	N	N	N	S	S	S	N
Mobile Home Park	N	N	N	N	N	N	N	N	N	N	N
Multi-Family	S	S	S	S	S	N	N	N	S	N	N
Single-Family	Y	Y	S	Y	S	N	N	N	Y	Y	N
Two-Family	S	S	S	S	S	N	N	N	S	S	N
Two Single-Family Dwelling Units on One Lot (19)	S	S	S	S	N	N	N	N	S	S	N

Accessory Uses

	R-1	R-2	VIL (2,3)	BL-1 (2,3)	B-2	FLEX	IND	MAR (2,3)	RD	S	GD
Accessory Apartment	Y	Y	Y	Y	Y	N	N	N	Y	Y	N
Accessory Dwelling Unit	S	S	S	S	N	N	N	N	S	S	N
Animal Kennel, Accessory to Veterinary	N	N	N	S	N	Y	N	N	S	N	N
Animal Kennel, Accessory to Residential Use	S	S	N	S	N	N	N	S	S	N	N
Antenna, Amateur Radio, Accessory to Residential Use	Y	Y	N	Y	Y	N	N	N	Y	N	N
Antique Shop, Art Gallery, Gift Shop, Accessory to cultural/institutional Use	S	S	S	Y	Y	N	N	Y	N	N	N
Automatic Teller Machines, Accessory to Retail Use	N	N	S	Y	Y	Y	N	Y	N	N	N
Camper Storage	Y	Y	N	S	N	N	N	N	Y	N	N
Car Wash, accessory to Gasoline Station	N	N	N	SA	SA	SA	SA	N	N	N	N
Common Driveway	S	S	S	S	S	S	S	S	S	S	S
Construction Trailer Office,	Y	Y	S	Y	Y	Y	Y	Y	Y	N	N

temporary accessory

Convenience store accessory to Gasoline Station	N	N	N	S	Y	Y	Y	S	N	N	N
Drive-Up or Drive-Through, accessory to Retail Use	N	N	N	N	N	N	N	N	N	N	N
Family Daycare (Accessory to Dwelling)	Y	Y	S	Y	N	N	N	Y	Y	Y	N
	R-1	R-2	VIL (2,3) S	BL-1 (2,3) Y	B-2	FLEX	IND	MAR (2,3) N	RD	S	GD
Guest House, accessory to Residential Use	Y	Y			N	N	N	Y	Y		N
Heliport, accessory to Commercial/ Institutional Use	N	N	N	N	N	S	N	S	N	N	N
Personal Animal Kennel, accessory to Residential Use	S	S	S	N	N	N	N	N	S	N	N
Home Occupation, accessory to Residential Use	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	N
Medical Office, accessory to Commercial Use (20,21)	N	N	S	S	S	N	N	N	S	N	N
Motor Vehicle Sales, Wholesale, accessory to New Car Sales (8)	N	N	N	N	N	S	N	N	N	N	N
Office, professional accessory to Commercial Use	N	N	S	Y	Y	Y	N	S	S	N	N
Private Garage/Boathouse	Y	Y	S	Y	Y	Y	Y	Y	Y	N	N
Restaurant accessory to Commercial Use	N	N	S	Y	Y	S	N	Y	S	S	N
Sale of Products Manufactured On-Site, accessory to Retail Use	N	N	S	Y	Y	Y	N	Y	S	N	N
Stables accessory to Residential Use (18)	Y	Y	S	N	N	N	N	N	Y	N	N
Swimming Pools accessory to Residential Use	Y	Y	S	Y	Y	N	N	N	Y	N	N
Tennis Courts accessory to Residential or Commercial Use	Y	Y	S	Y	Y	N	N	S	Y	N	N
Terminal, Trucking accessory to Commercial Use (23)	N	N	N	N	N	S	S	N	N	N	S
Use of toxic materials accessory to Commercial Use	N	N	N	SA	SA	SA	SA	SA	SA	N	SA
Used Car Sales, accessory to motor vehicle sales, rental and retail	N	N	N	S(8)	N	S(8)	N	N	N	N	N

	R-1	R-2	VIL (2,3)	BL-1 (2,3)	B-2	FLEX	IND	MAR (2,3)	RD	S	GD
Wastewater Treatment Facility, Accessory (17)	SA	SA	N	SA	SA	SA	SA	SA	SA	SA	SA
Wastewater Effluent Disposal, Accessory (16)	SA	SA	N	SA	SA	SA	SA	SA	SA	N	SA
Wind Turbines accessory to residential use	S	S	N	S	S	N	N	N	S	N	N

USE REGULATION SCHEDULE NOTES

1. As defined by G. L. c. 40A.
2. Drive-up and drive-through facilities shall be prohibited.
3. Design guidelines of the Old King's Highway Historic District shall apply.
4. As required by Section 3900.
5. RESERVED.
6. Subject to open storage minimum set back: 25 feet front, 10 feet both side and rear. No stored boat shall be used for dwelling or sleeping purposes.
7. Products to be retailed must be directly related to the primary industrial activity.
8. Limit of twelve vehicles or watercraft on site at any one time.
9. Above-ground storage of household quantities of hazardous materials as defined by DEP regulations shall not require special permit.
10. Junkyards shall not be allowed.
11. See **Section 5030**, Prohibited Uses.
12. Limited to marine or scientific research laboratories devoted to research, design and/or experimentation and processing of fabrication incidental thereto.
13. See Hazardous Materials definition.
14. Allowed throughout the Industrial Area adjacent to the Cape Cod Canal.
15. If in Wireless Telecommunications Overlay District.
16. If outside Water Resource Protection District.
17. Subject to the requirements of Section 5000.
18. No more than one horse allowed on parcel less than one acre. On parcels greater than one acre but less than five acres, Board of Health regulations shall govern the number of horses allowable per nitrogen loading calculations. By special permit in Three Ponds District.
19. By special permit from Zoning Board of Appeals. Subject lot shall have at least twice the minimum lot area required for one principal single-family dwelling, at least the required frontage for one principal dwelling and both units satisfy requirements of **Section 2600**.
20. Only accessory to hospital or other medical facility.
21. Any use within the RD District that includes a medical office shall be located on a lot not less than five acres and shall be accessory to a principal use such as a hospital, continuing care retirement community, hospice care center or rehabilitation hospital.
22. As per **Section 4180**
23. To service fleet of trucks subordinate to principal use.
24. Discharge not allowed in Three Ponds, Surface Water Protection or Water Resource Overlay Districts if facility exceeds 10,000 gpd or more of discharge.
25. Y - permitted by-right if in Ground Mounted Solar Overlay District.

2321. Uses whether or not on the same parcel as activities permitted as matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with **scientific research or scientific development or related production** may be permitted upon the issuance of a special permit provided the Special Permit Granting Authority (SPGA) finds that the proposed accessory use does not substantially derogate from the public good.

2400. Non-Conforming Uses. The use of any structure or land lawfully existing at the time of the enactment or subsequent amendment of this bylaw may be continued although such structure or use does not conform with provisions of this by-law, subject to the following conditions and exceptions:

2410. Abandonment. A non-conforming use of a building or land, which has been abandoned for a period of five (5) years, shall not thereafter be returned to such non-conforming use. A non-conforming use shall be considered abandoned when the premises has been vacant for five years, or when the characteristic equipment and/or

furnishings of the non-conforming use have been removed from the premises and have not been replaced by similar equipment, whichever shall occur first.

2420. Change, Extension Or Alteration. No change, extension or alteration of a pre-existing non-conforming use and no change, extension or alteration of a pre-existing nonconforming structure may be made except upon the issuance of a special permit from the Zoning Board of Appeals. Such a special permit may be granted only if the special permit granting authority finds that the proposed change, extension or alteration of a pre-existing non-conforming use, or change, extension or alteration of a pre-existing non-conforming structure is not substantially more detrimental to the neighborhood than the existing nonconforming use or non-conforming structure.

Provided, however, that alteration, reconstruction, extension or structural change to a lawfully existing single or two-family residential structure shall not be subject to the special permit requirements of this Section 2420 if the alteration, reconstruction, extension or structural change does not increase the nonconforming nature of the structure. (Amended 1/14/08)

The following conditions shall apply to any special permit granted under this section:

- a). When the permit applicant requests either a change, extension or alteration of a non-conforming use or change, extension or alteration of a non-conforming structure, any change, extension or alteration may occur only upon those parcels of land upon which the pre-existing non-conforming use or structure is located;
- b). When the permit applicant requests either a change, extension or alteration of a non-conforming use, or a change, extension or alteration of a non-conforming structure, the permit applicant shall substantially screen all new parking from abutters and from streets. (5/4/98)

2430. Restoration. In case of destruction or damage by fire or other catastrophe, a legally non-conforming structure may be rebuilt in substantially the form it had at the time of the destruction or damage, or in any form if within applicable setback requirement and not larger than previously, provided that reconstruction is started within twelve (12) months and completed within twenty-four (24) months of the catastrophe.

2500. INTENSITY OF USE REGULATIONS

2510. All buildings hereafter erected in any district shall be located on a lot such that all the requirements set forth in Section 2600 are conformed with, except where specifically exempted by this by-law or by General Law. Construction or operations under a building or special permit shall conform to any subsequent amendment of the ordinance or by-law unless the use or construction is commenced within a period of not less than six (6) months after issuance of the permit and, in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

2520. No lot shall be changed in size or shape so as to result in a violation of Section 2600, if such alteration increases the number of actual or potential building lots.

2530. Where **no street line** has been established or can be readily determined, such line shall be assumed to be twenty-five feet (25') from the center of the traveled roadway for the purpose of applying these regulations.

2540. Multiple Principal Buildings on the Same Lot.

- a. **Residential Districts.** Up to two principal dwellings may be allowed in R-1, R-2, and Ridge zoning districts on the same lot, but only upon issuance of a special permit by the Zoning Board of Appeals. Such a special permit shall not be issued unless the subject lot has at least twice the minimum lot area required for one principal dwelling, at least the required frontage for one principal dwelling; and then only if both proposed dwellings satisfy all of the minimum yard, lot coverage and other dimensional requirements set forth under Section 2600.
- b. **Commercial Districts.** Multiple principal buildings may be allowed in the BL-1, B-2, Industrial Limited, and Marine Limited Districts, but only upon issuance of a special permit by the Zoning Board of Appeals. Such a special permit shall not be issued unless the subject lot satisfies the minimum requirements set forth in Section 2600 for one building and unless each building satisfies all of the minimum yard and lot requirements set forth in Section 2600.
- c. **Affordable Housing.** In the BL-1 and B-2 Districts, one dwelling unit may be located within a structure which has a principal non-residential use, but only upon issuance of a special permit by the Zoning Board of Appeals. Additional dwelling units may thereafter be authorized by special permit; however, to be eligible for a special permit for additional dwelling units, a 1:1 ratio of market rate units to affordable units shall be established and maintained. The Board of Appeals shall condition any special permit allowing the affordable units according to the affordability criteria in Section 4138. In addition, no special permit for more than one

such unit shall be issued unless adequate parking is provided; appropriate site provisions have been made for both the residential and non-residential uses; and all of the criteria of Section 1330 have been shown to be satisfied.

d. Mixed Use Cluster Developments. In the B2 district, multiple mixed market rate and affordable owner occupied or rental dwelling units may be located on an individual lot within a Mixed Use Cluster Development by special permit from the ZBA pursuant to Section 4500. In the case of affordable units, the provisions of Section 4130 shall not apply; however, the Zoning Board of Appeals shall condition any special permit allowing for Mixed Use Cluster affordable housing according to the affordability requirements in Section 4505, subsection b, 1 and 2, and the special permit criteria of Section 1342.

2550. Non-Conforming Lots. Application of amended Intensity of Use Regulations to previously created lots is limited by Section 6, Chapter 40A M.G.L. In addition, any increase in lot area, width, depth, frontage, yard, or coverage requirements of this by-law shall not apply to erection, extension, alterations, or moving of a structure on a legally created lot not meeting current requirements, provided that either the lot is in an exempted subdivision (see Section 2560) or the applicant documents that:

- a.) At the time such increase requirement became applicable to it, the lot:
 - 1. Had at least 5,000 square feet of lot area and 50 feet of frontage on a street; and
 - 2. Conformed to the existing dimensions required at the time of creation,
- b.) The lot is to be used for a single dwelling unit or for non-residential use, provided that no side yard shall be less than 20 feet on a lot having frontage of more than 100 feet but less than 200 feet and that no side yard shall be less than the greater of ten (10) percent of the lot's frontage or six (6) feet on one side and eight (8) feet on the other on a lot having frontage of 100 feet or less,
- c.) And the lot was held in ownership separate from all abutting property on December 31, 1998 and at all times hereafter. (Amended 5/4/98 and 1/14/08)

Such non-conforming lots may be changed in size or shape or their land area recombined without losing this exemption, so long as the change does not increase the actual or potential number of buildable lots.

2555. Any legally created lot with an area of at least 20,000 square feet, and frontage of at least 125 feet, which, while buildable for single family residential use, was held in separate ownership from all adjoining property and which has been held in such separate ownership at all times thereafter, shall be buildable for single family residential use notwithstanding lack of compliance with the dimensional requirements of Section 2600. Buildings constructed on such lot shall conform to the setbacks required for the lot when the lot was created. (Added ATM 5/6/96).

2560. Reserved. (Deleted ATM 92)

2570. Reserved. (Deleted ATM 94)

2580. Residential condominium shall comply with the regulations for multi-family dwellings. (See Section 4600).

2590. Water Resource Overlay District. Residential uses located within a Water Resource District shall be governed by the lot area requirements of the R-2 District if more restrictive than otherwise applicable requirements. This requirement shall not apply to lots created on plans recorded prior to January 1, 1985.

2600 INTENSITY OF USE SCHEDULE

(See 4640 for Multi-family dwelling requirements)

	R-1	BL-1 (a) MAR VIL, S	B-2 (q)	FLEX IND	R-2 GD	RD (n,o)
Minimum lot size in square feet (b,h,l)	40,000	20,000	40,000	40,000	60,000	60,000
Minimum lot frontage in feet	150	125	150	150	200	200
Minimum front yard in feet (c)	30	30 (p)	30 (p)	30 (f)	50	40
Minimum side & rear yard in feet (c,d, e, i)	25	0	0	30 (m)	45	30
Maximum lot coverage %	25	None	None	None	25	25
Maximum building height (g) in feet (Amended STM 4/1/96)	35	35	35	45	35	35
Maximum shape factor (k)	22	22	22	22	22	22

Intensity of Use Schedule Notes:

- a) Permitted residential uses must conform to the requirements at the nearest residential district.
- b) RESERVED.
- c) On special permit from the Board of Appeals, may be reduced to the lesser of thirty percent (30%) of lot depth or the average of the setbacks of the buildings on the lot next thereto on either side, a vacant lot or a lot occupied by a building set back more than the minimum requirement being counted as though occupied by a building set back by the minimum.
- d) One-story accessory buildings may be located within a required yard, but not less than ten (10) feet from lot lines other than street lines; except an accessory building of one hundred (100) square feet or less may be located no closer than six (6) feet to the line.
- e) No building or any part thereof, except steps, shall be built within twelve (12) feet of any other building.
- f) If abutting an arterial street, sixty (60) feet front yard setback is required and to be maintained with vegetation.
- g) A special permit may be granted by the Board of Appeals in accordance with Section 4160 for a height greater than the maximum building height for the District. (Amended 1/14/08).A special permit may be granted by the Board of Appeals in accordance with Section 4160 for a height greater than the maximum building height for the District. (Amended 1/14/08).
- h) For two family dwellings on lots shown on a plan recorded at the Barnstable County Registry of Deeds prior to March 1, 1982, increase the lot area by fifty (50) percent of present requirements; for all others increase lot area by one hundred (100) percent of present requirements, except as authorized under Section 4130.
- i) Any business abutting a residential district or an existing residence in a business district will, in the Business Limited-1, Shore, and Marine Districts be required to have a minimum side and rear yard setback of twenty (20) feet. In the Business Limited-2 District, the minimum side and rear setback will be thirty (30) feet. The minimum side and rear yard setback will only apply to those yards directly abutting a residence.
- j) A special permit may be granted by the Board of Appeals to construct an addition to a structure with an existing nonconforming setback, provided, however, that this nonconformity is not increased.
- k) The lot shape factor shall be obtained by dividing the square of the perimeter enclosing the lot area necessary for zoning compliance (P) by the minimum lot area required in the Zone (A) i.e.: $[P \text{ (squared)}]/A < 22]$.
- l) Minimum lot area requirements for all principal uses in residential districts located within a Water Resource District, as described in Section 5000, shall be 87,120 square feet.
- m) Any industrial use abutting any other district shall be required to have a minimum rear and side yard of 100 feet. (Added ATM 92)
- n) Any use within the RD District which entails medical office or medical services and technology use(s) shall be located on a parcel or lot of no less than five (5) acres and shall be accessory to a principal use as a Hospital, Continuing Care Retirement Community (CCRC), Hospice Center or Rehabilitation Hospital.
- o) Within the RD District, multiple principle non-residential buildings may be authorized under special permit as provided in Section 1320. A special permit shall not be required for any Accessory Building or Use.
- p) On special permit from the Board of Appeals, front yard setback may be reduced to as little as zero, notwithstanding any other provisions of the bylaw.
- q) May be increased up to 40 feet by Mixed Use Cluster Development Special Permit.

ARTICLE III GENERAL REGULATIONS

3100. PARKING REQUIREMENTS

3110. Adequate off-street parking shall be provided on all-weather surfaces within a reasonable distance to service all parking demands created by new construction, whether through new structures or additions to old ones, or by change of use of existing structures. Such parking shall be either on the same premises as the activity it services, or within three hundred feet (300') on a separate parcel, which may be jointly used with other premises for this purpose. The following minimums must be met unless, after application and hearing, the Board of Appeals grants a special permit upon a showing and determination that the construction of fewer spaces will adequately serve anticipated parking needs. Analyses used to demonstrate that a reduction of spaces is acceptable may include, but shall not be limited to a peak demand analysis consistent with the Institute of Traffic Engineers (ITE) guidance and the use of on-street parking where allowed. For uses allowed on special permit under Section 2300, the Board of Appeals may require that these minimums be exceeded to meet anticipated demand.

3111. Parking Overlay District. The "Parking Overlay District" is herein established as an overlay district and shall be superimposed on other districts established in this Zoning By-law. A plan entitled "Parking Overlay District" prepared by the Cape Cod Commission; dated February 2, 2000 is on file at the Planning & Development Office delineating this district and is hereby made part of this by-law.

3112. Parking Overlay District requirements. Prior to the expansion of any existing structure or use that is located in the Parking Overlay District and that qualifies for the so-called "religious use exemption" set forth under G.L. c. 40A, Section 3, a parking site plan permit shall be obtained from the Zoning Board of Appeals. Said parking site plan shall conform to the minimum requirements set forth in Section 3120 for Religious uses and structures. For any structure or use that qualifies for the G.L. c. 40A, Section 3 religious use exemption, a religious institution may count municipally owned parking located within the Parking Overlay District toward satisfaction of the requirements of Section 3120. In issuing the parking site plan permit, the Zoning Board of Appeals may impose reasonable requirements regarding the days and hours of use of the municipal parking to avoid conflicts with municipal parking needs.

3120. Table of Requirements.

The following Table of Requirements shall be used to determine the required number of spaces for individual uses. Where more than one primary use is located on a site, the sum of the required spaces for each individual use shall apply.

- **Bed & Breakfast:** one and one-eighth (1 1/8) spaces per guest unit (Added ATM /5/97)
- **Bowling Alley:** Four (4) spaces per lane.
- **Dwellings:** Two (2) spaces per dwelling unit.
- **Hospital:** One (1) space per bed.
- **Industrial retail accessory use, offices and stores:** One (1) space per two hundred (200) square feet of gross floor area.
- **Industrial, Wholesale:** One (1) space per one and one-half (1 1/2) employees per shift.
- **Motel, Motor Court, Lodging House:** one and one-eighth (1 1/8) spaces per guest unit.
- **Nursing Home:** One (1) space per four (4) beds.
- **Place of Assembly:** One (1) space for three (3) seats.
- **Religious uses and structures** that qualify for the zoning exemption set forth in G.L. c. 40 A, Section 3: One space for each three seats.
- **Restaurants:** A minimum of five (5) spaces or one (1) space for three (3) seats, plus five (5) spaces per take-out area.
- **Supermarket, Grocery Store, Convenience Store:** One (1) space per 200 square feet of gross floor area.
- **Others individually determined.**

3130. No off-street parking shall be maintained closer to the street line than twenty feet (20') **unless approved as part of a Mixed Use Cluster Development special permit.** In **B-2** and **Industrial District**, no off-street parking shall be located between the principal building and the street line of an arterial street unless completely screened from view from the arterial street by vegetation and topography. Off-street parking servicing a use not allowed in an **R-1** or **R-2** District shall not be maintained within thirty feet (30') of said district bounds.

3140. Centerlines of driveways serving 20 or more parking spaces if egressing into an arterial street shall observe separations as follows:

	<u>B-2 District</u>	<u>Other Districts</u>
Other such driveways:		
Same side of the road	500 ft. min.	250 ft. min.
Opposite side of the road	0 or 200 ft.	0 or 125 ft.
Intersecting street sidelines	250 ft.	125ft.
No existing parcel in a Business Limited or Industrial District shall be subdivided into lots with frontage which would preclude meeting these requirements, unless access rights-of-way are provided across adjoining lots. Driveways subject to this section shall have 400-foot visibility in each travel direction, and shall comprise no more than two travel lanes, each not more than twelve feet. (12') in width at the lot line.		

3150. Parking areas for six (6) or more cars shall be so designed and located that their use does not require backing on a public way.

3200. STANDING AND LOADING REQUIREMENTS

3210. Any facility, such as a car wash or drive-in facility, which, from time to time, has **queues of vehicles** waiting for admission, shall have sufficient on-site space for such queues without requiring cars to stand on any public way or across any public sidewalk.

3220. Adequate off-street loading facilities and space must be provided to service all needs created by new construction, whether through new structures or additions to old ones, and by change of use of existing structures. Facilities shall be so sized and arranged that no trucks need back onto or off of a public way, or be parked on a public way while loading, unloading or waiting to do so.

3300. SIGN REGULATIONS. See Town By-Law, Section 6.60

3400. ENVIRONMENTAL CONTROLS

3410. No activity shall be permitted in any district unless it can be demonstrated that its operation will be so conducted that the following requirements will be met:

3420. No noise, sound from public address or other amplification system, vibration, odor, or flashing light shall be perceptible without instruments more than four hundred (400) feet beyond the boundary of the lot, if originating in the Industrial Limited District, or more than two- hundred (200) feet beyond the boundary, if originating in any other district, except for the following:

- a. Disturbances produced by maintenance or repair of buildings and grounds.
- b. Farm equipment.
- c. Construction equipment between hours of 7 a.m. and 7 p.m. only.
- d. Warning Devices.
- e. Unamplified human voices.

3430. Cinders, dust, fumes, gases, radiation or trash or other waste shall be effectively confined out of sight on the premises or disposed of.

3431. On-site waste disposal. Any use resulting in on-site disposal of the following wastes shall require a special permit from the Board of Appeals as provided for in **Section 1380** herein:

- a. Process wastes from operations other than personal hygiene and food for residents, patrons and employees.
- b. Other than for single-family residences, sewage flows, as determined by Title 5 of the State Environmental Code, exceeding 110 gallons per day per 10,000 square feet of lot area, or exceeding 15,000 gallons per day regardless of lot area.

3440. Smoke density at the point of discharge shall not exceed #2 on the Ringlemann scale for more than six minutes out of any hour, and at no time shall exceed #3 on that scale.

3450. Total airborne particulate matter measured at all points of emission within the premises shall not exceed thirty (30) grams per hour per acre of lot area. All storage yards, drives or untreated open areas shall be maintained with landscaping, paving, screening, sprinkling, or other means such that there shall be no transmission of dust or other particulate matter measurable from the ground at the boundary of the premises.

3460. All applicable state and federal requirements pertaining to **radio activity or electrical disturbances** shall be complied with.

3470. Lighting.

- a. The following forms of lighting are prohibited:
 1. Lights that outline any part of a structure or strings of lights attached to landscaping elements, except temporary traditional decorations for religious or other recognized holidays.
 2. Lighting that casts direct light or glare onto any neighboring residential property.
 3. Lighting that interferes with the safe vision of vehicle operators or obstructs the view of effectiveness of any official traffic sign, traffic signal or traffic marking.
- b. Outdoor lighting fixtures shall be mounted no higher than twenty (20) feet, except for street lights or lighting for public outdoor recreational facilities.

3480. The Building Inspector may require that the applicant for a facility whose future compliance with these standards is questionable furnish **evidence of probable compliance**, whether by example of similar facilities or by engineering analysis. Issuance of a permit on the basis of that evidence shall certify the Town's acceptance of the conformance of the basic structure and equipment, but future equipment changes and operating procedures must be such as to also comply with these standards.

3500. LANDSCAPING AND SCREENING. The following shall be observed in all districts:

3510.

- a. Not less than thirty (30) percent of lot area shall be retained in a vegetated condition unless by special permit.
- b. **Vegetation Restoration.** Where a lot or a portion of a lot has been previously cleared and does not currently support any vegetation, the 30% requirement described in Section 3510b shall be met by replanting an area that alone or in combination with existing natural state vegetation shall constitute 30% of the lot area.
 1. Lots that do not meet the requirements of Section 3510b shall be planted with a mixture of trees, shrubs, and groundcover species chosen to replicate natural state growth in nearby undisturbed areas.
 2. Any permit application for a lot that does not meet the requirements of Section 3510b shall submit, as part of the permit application, a planting plan stamped by a Registered Landscape Architect that shall be acted upon as part of the approval process for the permit.
 3. The permitting board or agency, as a condition of their permit approval, shall require surety in a form acceptable to the permitting agency or board and the Town Treasurer in an amount sufficient to guarantee the survival of the plantings depicted on the approved restoration planting plan for two growing seasons after planting.
 4. After such restoration, the restored area shall not be mowed, cleared, or otherwise disturbed.

Variations from these three standards shall require special permits from the Board of Appeals as provided for in **Section 1380** herein.

3520. Parking lots for six (6) or more cars shall contain, or be bordered within five (5) feet, by at least one tree per six (6) cars. Trees to be of two (2) inch caliper or larger and, if within the parking area, to be planted in curbed soil plots allowing not less than ten feet by ten feet (10' x 10') of unpaved soil area per tree.

3530. Erosion Control. Erosion control provisions showing site design, building design and a construction process sufficient to prevent erosion or excessive uncontrolled surface water runoff shall be shown on plans submitted as part of the building permit and/or disposal works construction permit and shall comply with the following:

1. No grading or construction shall take place on slopes in excess of twenty (20) percent unless adequate provisions to protect against erosion, soil instability, uncontrolled surface water runoff, or other environmental degradation are placed and constructed to the satisfaction of the Building Official.
2. No inspection shall be conducted unless all required erosion control measures are in place and fully constructed to the satisfaction of the Building Official.
3. Permanent erosion control measures including but not limited to re-vegetation, retention basins and siltation barriers shall be placed, constructed and maintained at all times to the satisfaction of the Building Official.
4. (Amended ATM 5/3/99).

3540. All outdoor sales display areas and all **commercial outdoor recreation** must be screened from any

adjacent residential use or district by a wall, fence, or densely planted trees, or shrubs three (3) feet or more in height or be equivalently obscured by natural vegetation. Parking areas of six (6) or more cars, contractor's yards, open storage, and loading or service yards shall be similarly screened from any adjacent residential district or use and from any public way from which they would otherwise be visible. All outdoor sales display areas of merchandise within a residential district shall be located behind the required front yard area.

3550. At **corners**, no sign, fence, wall, hedge, or other obstruction shall be allowed to block vision between two and a half (2 1/2) feet and eight (8) feet above the street grade within an area formed by the intersecting street lines and a straight line joining points on said lines twenty (20) feet back from their point of intersection.

3560. No **sight-obstructing fence or wall** shall exceed three (3) feet in height within a required front yard or exceed six (6) feet in height within a required side or rear yard unless granted a special permit for an exception by the Board of Appeals. Such special permit shall be granted only upon the Board's determination that the increased height will not create hazard, unreasonably obstruct visibility from adjacent properties or habitable rooms in any dwelling, or create an unsightly departure from the character of the environs.

3600. POND SETBACK REQUIREMENTS

3610. No principal structure shall be erected less than fifty (50) feet from the waters of fresh water ponds and lakes. The water's location of these ponds shall be measured from the elevation as follows:

a.)	Goodspeed Cemetery Pond	69
b.)	Upper Hog Pond	64
c.)	Lawrence Pond	65
d.)	Peters Pond	71
e.)	Pimlico Pond	67
f.)	Lower Shawme Lake	20
g.)	Upper Shawme Lake	28
h.)	Snake Pond	72
i.)	Spectacle Pond	67
j.)	Triangle Pond	66
k.)	Weeks Pond	72

The waters of any other fresh ponds and lakes shall be determined by the contour of the highest observed elevation, established by measuring the existing elevation and adjusting that elevation by using the methods specified in the U.S.G.S. Water Resources Investigations 83-4112 with subsequent amendments, if any, as if the waters of the pond or lake were the ground water.

3620. No building permit shall be issued for any principal structure erected on a lot fronting on fresh waters described above until a plan certified by a Registered Land Surveyor is furnished to the Building Inspector. Said plan shall clearly delineate the distance from the proposed structure to the water body.

3630. Any lot shown on a plan or described in a deed duly recorded at the Registry of Deeds that has less than one hundred twenty-five (125) feet depth from the measured water mark to the front, side, or rear lot line, whichever is greater, shall be eligible to apply to the Board of Appeals for a special permit to construct a single-family residence if, when all setbacks are taken into consideration, including the fifty (50) foot setback required herein, the possible remaining building envelope does not contain a sixty (60) foot diameter circle. In no case shall the Board of Appeals grant a special permit to construct a single-family residence less than thirty (30) feet from the measured water's edge, as described above.

3700. BUILDING SITING.

3710. If a building is sited so that its principal floor elevation on the side nearest the street is below the street elevation, the building shall be set back from the edge of the street pavement a minimum of fifteen (15) feet for each one (1) foot the

principal floor elevation is below the street elevation. Street elevation shall be measured at the edge of pavement directly in front of the center of the building. This requirement does not affect the setbacks mandated by Section 2600 (Amended STM 94).

3720. No opening into the wall of a building, including a garage or basement wall, shall be located at a lower elevation than the overflow elevation of the lot. The overflow elevation shall be defined as the highest elevation at which water would be contained within the boundaries of the site.

3800. WIRELESS TELECOMMUNICATIONS SERVICES.

Section 3800 is promulgated under the authority of M.G.L. Chapter 40A, the Home Rule Amendment of the Massachusetts Constitution and the 1996 Telecommunications Act, 47 U.S.C. Section 332 (c) (7) (A). A wireless communication facility shall not be placed, constructed or modified except in accordance with the provisions of this Zoning By-law. This By-law shall not apply to federally licensed amateur radio operators protected under M.G.L. Chapter 40A, Section 3, telecommunications facilities which are exclusively accessory to a marine use or other public safety telecommunications, or television antennas which are accessory to a residential use.

3810. Purpose. The purpose of this section is to enable Commercial Mobile Radio Services (CMRS) providers to reasonably locate within the Town of Sandwich while at the same time protecting the important public interests of health, safety and welfare. Specifically, the Wireless Telecommunications Services Zoning has been created to:

- a. protect the general public from potential hazards associated with wireless telecommunications facilities;
- b. minimize adverse effects on property values;
- c. minimize the visual impacts of wireless telecommunications facilities within Sandwich;
- d. encourage co-location and utilization of existing structures;
- e. minimize the total number of towers in Sandwich to the extent possible under the federal Telecommunications Act; and
- f. ensure strict compliance with all applicable federal regulations concerning the effects of radio frequency emissions.

3820. Wireless Telecommunications Overlay District

The Wireless Telecommunications Overlay District is herein established as an overlay district and shall be superimposed on other districts established in this Zoning By-law. A plan entitled "**Wireless Telecommunications Overlay District**" prepared by the Cape Cod Commission, dated March 27, 1998 and as revised on a plan dated January 6, 1999 and as amended at Special Town Meeting March 22, 1999 and January 22, 2002 is on file in the Planning & Development Office delineating this district and is hereby made a part of this By-law.

New telecommunications facilities that are constructed exclusively for the purpose of transmitting and receiving television, AM/FM radio, digital, microwave, cellular, telephone or similar forms of electromagnetic radiation must be located within the Wireless Telecommunications Overlay District.

3830. Definitions. In addition to the definitions contained in Article VII, the following definitions shall apply to Section 3800.

ANTENNA - A device for transmitting and receiving electromagnetic waves.

BASE STATION - The primary sending and receiving site in a wireless telecommunications network. More than one base station and/or more than one variety of telecommunications providers can be located on a single tower or structure.

CHANNEL - The segment of the radiation spectrum from an antenna that carries one signal. An antenna may radiate on many channels simultaneously.

COMMERCIAL MOBILE RADIO SERVICES PROVIDERS (CMRS PROVIDERS) - Public service corporations within the meaning of M.G.L., Chapter 40A, Section 3 which provide Commercial Mobile Radio Services (CMRS) facilities including cellular, personal communications services (PCS), enhanced specialized mobile radio (ESMR), specialized mobile radio (SMR) and paging.

DBM - Unit of measure of the power level of an electromagnetic signal expressed in decibels referenced to 1 milliwatt.

EMF – Electromagnetic frequency radiation.

FCC - Federal Communications Commission of the United States of America.

FCC 96-326 - A report and order that sets national standards for emissions of radio frequency emissions from FCC regulated transmitters.

GHz – Gigahertz – one billion hertz.

GUYED TOWER - A monopole or lattice tower that is tied to the ground or other surface by diagonal cables.

HERTZ - One hertz is the frequency of an electric or magnetic field that reverses polarity once each second, or one cycle per second.

LATTICE TOWER - A type of mount that is self-supporting with multiple legs and cross bracing of structural steel.

MHz – Megahertz – one million hertz.

MONITORING PROTOCOL - The testing protocol, such as the Cobbs Protocol, or a protocol substantially similar, including compliance determined in accordance with the National Council on Radiation Protection and Measurements, Reports 86 and 119, that is to be used to monitor emissions from existing and new personal wireless service facilities. Other testing protocols may be required as the technology changes.

PRE-EXISTING BUILDING OR STRUCTURE - Any building or structure that was not originally constructed to house or support telecommunications facilities and does not have as its principal purpose the housing or support of telecommunications facilities.

RADIAL PLOTS - Radial plots are the result of drawing equally spaced lines (radials) from the point of the antenna, calculating the expected signal and indicating this graphically on a map. The relative signal strength may be indicated by varying the size or color at each point being studied along the radial; a threshold plot uses a mark to indicate whether that point is strong enough to provide adequate coverage. Radial plots concentrate plot points close to the antenna while plot points diverge near the ends of the radials at the outer edge of coverage.

REPEATER - A small receiver/relay transmitter of not more than 20 watts output designed to provide service to areas which are not able to receive adequate coverage directly from an existing wireless telecommunication facility.

TELECOMMUNICATIONS BUILDING - Any building utilized primarily for the installation and operation of equipment for generating and detecting electromagnetic radiation and which is accessory to a communication structure.

TELECOMMUNICATIONS FACILITY - Any structure including all buildings and appurtenances solely intended to house and/or support equipment (equipment shelter), used for transmission and/or reception of electromagnetic radiation, including towers, monopoles, antennas, wiring or other devices attached thereto, including guy wires.

TELECOMMUNICATIONS TOWERS - Any guyed, monopole, or self-supported tower, constructed as a free-standing structure proposed to mount one or more antennas intended for transmitting and receiving television, AM/FM radio, digital, microwave, cellular, telephone or similar forms of electromagnetic radiation.

TILED COVERAGE PLOTS - Tiled plots calculate the signal at uniformly spaced locations on a rectangular grid, or tile, of the proposed coverage area. Relative signal strength may be indicated by varying the size or color at each point being studied. Tiled plots provide a uniform distribution of points over the coverage area. Tiled coverage plots incorporate more topographic data than radial plots and are the preferred form for coverage mapping.

3840. Pre-Existing Building, Structure, and Telecommunications Tower. If feasible, all telecommunications facilities (excluding equipment shelters) shall be located on pre-existing buildings or structures or pre-existing telecommunications towers, in accordance with the requirements of this Zoning By-law. Installation of a new telecommunications facility on a pre-existing building or structure or telecommunications tower, performed in accordance with the requirements of this Zoning By-law, shall be permitted as of right; however, a building permit shall be required in all cases.

The Building Inspector shall determine that the following requirements have been satisfied prior to the issuance of a building permit to install a telecommunications facility on a preexisting building or structure or pre-existing telecommunications tower:

- a) Installation of a new telecommunications facility under this section shall not result in an increase in the height of the pre-existing building, structure or tower by more than twenty feet; and,
- b) Evidence shall be provided to the Building Inspector that all applicable federal, state and local permits, certificates and other approvals have been acquired including a Certificate of Appropriateness from the Historic District Committee, if applicable; and
- c) Installation of any new telecommunications facility and their equipment shelters shall be camouflaged to the greatest extent possible, including use of compatible building materials and colors and vegetative year-round screening from adjacent properties, and
- d) Any facade or roof-mounted antenna or panel located on an existing structure that is listed on, or eligible for listing on, the National or Massachusetts Registers of Historic Places shall not alter or destroy the character-defining features, distinctive construction methods or original historic materials of the building. Any alteration made to a structure that is listed on or eligible for listing on the National or Massachusetts Registers of Historic Places to accommodate a facade or roof mounted antenna shall be fully reversible, and
- e) Output frequency, number of channels, power input and maximum power output per channel; antenna type and orientation; tiled coverage plots for the proposed facility and for any repeaters to be

used in conjunction with the proposed facility shall be filed with the application for a building permit.

3850. New Wireless Telecommunications Facilities on New Structures. All new wireless telecommunications facilities on new structures require a special permit from the Sandwich Planning Board in accordance with M.G.L. Chapter 40A, Section 9 and this By-law. The owner(s) of the land that is the subject of the special permit application shall apply for the special permit together with the telecommunications provider.

3851. Special Permit Application Procedure. The applicant is strongly urged to meet with the Planning Board for a preliminary discussion of their application for a proposed wireless telecommunications facility.

3852. Special Permit Application Filing Requirements. The following information must be submitted for an application to be considered complete:

- a) A fully executed application form.
- b) A certified abutters list.
- c) A site plan prepared by a professional engineer at a scale of 1"=40" which shall allow the following:
 1. Tower location, including guy wires, if any, and tower height
 2. Accessory building or structures for equipment
 3. Topography at five foot contour intervals
 4. Fencing, landscaping & lighting
 5. Access and parking
 6. Abutters
 7. Areas to be cleared of vegetation
 8. Site boundaries
- d) A locus plan at a scale of 1" = 1000' which shall show all streets, bodies of water, landscape features, historic sites, and all buildings within the parcel and within three hundred (300) feet of the property lines, and the exact location of the proposed structure(s). An aerial photograph of a similar scale encompassing the stated requirements is allowed.
- e) Detailed calculations and plans for drainage and drainage structures as described in the most recently revised Sandwich Subdivision Rules & Regulations.
- f) Plans shall satisfy requirements, both transitional and permanent, for the prevention of erosion and excessive surface water runoff during construction and operation of the facility as described in Section 3530 of this by-law.
- g) A color photograph or rendition of the facility with its antennas and/or panels, illustrating the dish or antenna at the proposed location is required. A rendition shall also be prepared illustrating a view of the facility from the nearest street(s).
- h) Drawings and studies that show the ultimate appearance and operation of the personal wireless service facility at full build-out are required.
- i) A description of the facility and the reasons for the proposed location, height and design.
- j) A professional structural engineer's written description of the proposed tower structure including tower superstructure and foundation and their capacity to support the tower superstructure, the proposed antenna(s) and possible additional antenna(s).
- k) A description of available space on the tower providing illustrations and examples of the type and number of wireless telecommunications devices that could be mounted on the proposed tower structure.
- l) A written statement from the applicant that the proposed facility complies with, or is exempt from applicable regulations administered by the Federal, State, and County governments.
- m) Output frequency, number of channels, power input and maximum power output per channel; antenna type and orientation; tiled coverage plots for the proposed facility and for any repeaters to be used in conjunction with the proposed facility.

3853. Site Requirements.

- a) Telecommunications buildings and other accessory structures housing support equipment shall be screened from adjacent properties to the greatest extent possible.
- b) Signs shall be limited to those needed to identify the property and the owner and warn of any danger. Announcement signage shall be provided that indicates "No Trespassing" and "Danger" and a telephone number which shall provide 24-hour access to the operator of the facility in the event of an emergency; and otherwise comply with the Town's Sign By-law.
- c) All network connections from the telecommunications site shall be via underground landlines except to the extent that underground landlines are not feasible, due to underground conditions, in the reasonable determination of the Planning Board. Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation, maintenance and access to the facility.
- d) Night lighting shall be the minimum necessary to satisfy the requirements of state and federal laws. Lighting of equipment structures and any other facilities on site shall be shielded from abutting properties. There shall be total

cutoff of all light at the property lines of the parcel to be developed, and footcandle measurements at the property line shall be 0.0 initial footcandles when measured at grade.

- e) Telecommunications towers shall be set back from each property line a minimum of the distance equal to the height of the tower.
- f) Telecommunications towers shall not exceed 150 feet in height as measured from the original ground level.
- g) There shall be a minimum of one parking space for each new facility, to be used in connection with the maintenance of the facility and the site, and not to be used for the permanent storage of vehicles.
- h) Towers and facilities shall be a neutral, non-reflective color designed to blend with the surrounding environment.
- i) Towers and accessory structures shall not be located in wetlands or in wetland buffer zones.
- j) Stormwater run-off shall be contained on-site.

3854. Special Waivers. All of the requirements of **Section 3853** shall apply; however, the Planning Board is authorized to grant the following waivers if requested in writing and if the Board deems they are in the best interest of the Town:

- a) Waive the height of the tower up to 180' above ground level provided that the applicant demonstrates that strict adherence to the 150' foot maximum would effectively prohibit his/her ability to operate; and/or
- b) Waive setback requirements if the applicant can demonstrate control over adjacent property such that the fall zone of the telecommunications tower would be clear of any structures, excluding equipment shelters; and/or
- c) Waive other regulations if the applicant can demonstrate that they are duplicative in nature.

3855. Other Conditions.

- a) The Board may also impose, in addition to any applicable conditions specified in the By-law, such conditions as it finds reasonably appropriate to safeguard the neighborhood or otherwise serve the purposes of this By-law, including, but not limited to: screening, lighting, fences, limitation upon size, method of access or traffic features, parking, removal upon cessation of use, or other requirements. Such conditions shall be imposed in writing and the applicant may be required to post bond or other surety for compliance with said conditions in any amount satisfactory to the Board.
- b) The Board may require the proponent to provide or pay for engineering services, including but not limited to the following: to evaluate proposals submitted; determining flexibility of geographic location, loading capacities of structures, and architectural review of camouflage techniques.

3856. Criteria for Approval. The Planning Board will act within a reasonable time after closing the public hearing and will issue a special permit if it finds:

- a) That the proposed tower or device satisfies the requirements of this By-law and that the size, height, and design is the minimum necessary for that purpose; and
- b) That the applicant has demonstrated a good faith effort to co-locate with other carriers or to roof-mounted or facade the wireless telecommunication facility including in such good faith effort as:
 - 1. Submission of a list of alternative candidate sites considered for mounting or co-location and the reasons for rejection; and
 - 2. Contact, as may be feasible, with other licensed carriers for operating in the contiguous communities and the Special Permit Granting Authority finds no technically or economically equal co-location is available; and
- c) That the proposed tower or device is in compliance with federal and state requirements regarding aviation safety; and
- d) That the proposal complies with FCC Reg. 96-386 regarding emissions of electromagnetic radiation.

3857. Form for Denial. If the criteria for approval set forth in **Section 3856** are not met, Planning Board denial of the special permit shall be in writing and supported by substantial evidence contained in a written record.

3858. Modification. The Planning Board shall determine if a proposed modification to a wireless telecommunication facility requires additional review and approval.

3860. Maintenance. The applicant shall maintain the telecommunications facility in good condition. Such maintenance shall include, but not be limited to, the structural integrity of the tower and security barrier, and maintenance of the landscaping.

3870. Monitoring.

- a) Pre-testing: After the granting of the special permit and before the applicant's wireless telecommunication service begins transmission, the applicant shall pay for an independent consultant, hired by the town, to monitor the background levels of EMF radiation, around the proposed facility site and/or any repeater locations to be utilized for

the applicant's wireless telecommunication service. The consultant shall use the monitoring protocol as found in **Section 3830** definitions. A report of the monitoring results shall be prepared by the consultant and submitted to the Special Permit Granting Authority to become part of the record.

b) Post-testing: After transmission begins, the owner(s) of any wireless telecommunications facility shall pay for an independent consultant, hired by the town, to conduct testing and monitoring of EMF radiation emitted from said site, and to report the results of the monitoring as follows:

1. There shall be annual monitoring of emissions by the independent consultant using actual field measurement of radiation, utilizing the monitoring protocol as described in Section 3830. This monitoring shall measure levels of EMF radiation from the primary antennas at the facility as well as any repeaters. A report of the monitoring results shall be prepared by the consultant and submitted to the Special Permit Granting Authority.
2. Any major modification of an existing facility or the activation of additional permitted channels shall require new monitoring.

c) Excessive Emissions: Should the monitoring of a facility site document that any facility exceeds the FCC 96-326 standard, the owner(s) of all facilities using that site shall be notified. The owner(s) shall submit to the SPGA plan for the reduction of emissions to a level that complies with FCC 96-326 standard within 10 business days of notification of non-compliance. That plan shall reduce emissions to accomplish this reduction of emissions within 15 days of initial notification of non-compliance by the Building Inspector. Failure to accomplish this reduction of emissions shall be a violation of the special permit and subject to penalties and fines as specified in Section 1200 of the Sandwich Protective Zoning By-law. Such fines shall be payable by the owner(s) of the facility until compliance is achieved.

d) Structural Inspection: Tower owner(s) shall pay for a licensed professional structural engineer as an Independent Consultant hired by the town to conduct inspections of the tower's structural integrity and safety. Guyed towers shall be inspected every three years. Monopoles and non-guyed lattice towers shall be inspected every five years. The inspection report shall be submitted to the SPGA, the Building Inspector and the Town Engineer. Any modification of an existing facility that includes changes to tower dimensions or proposes to add more antennas or other wireless communications technology shall require a new structural inspection.

3880. Duration Of Special Permit/Building Permit for Telecommunications Uses. The Special Permit is granted for a period of one (1) year and shall lapse if substantial use or construction has not commenced by such a date, except for good cause shown and provided further that such construction, once begun, shall be actively and continuously pursued to completion within a reasonable time.

The construction or operation under any building or special permit shall conform to any subsequent amendment of this By-law unless the use or construction is commenced within a period of not more than six months after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

3890. Abandonment or Discontinuation Of Use. Non-use of a telecommunications facility for a continuous period of two years shall be deemed to constitute an intent to abandon. Upon abandonment or discontinuation of use, the applicant shall be responsible for the costs to physically remove any tower, including antennas, mount, equipment shelters, and security barriers and restore the location to a natural condition. Once abandonment or discontinuance has occurred, the carrier shall remove the facility from the subject property within ninety days. In the event that the carrier fails to remove the facility, the Town shall give notice to the carrier that the facility shall be removed forthwith and the Town, after according written notice seven days in advance to the carrier, shall remove the facility.

The applicant shall be responsible for the full reversal of any alteration made to a structure that is listed on or eligible for listing on the National or Massachusetts Register of Historic Places. The Planning Board shall require the applicant to post bond or other form of surety at the time of approval of the special permit to cover costs for the removal of the wireless telecommunications facility in the event the Town must remove the facility. In the event the amount of the surety is insufficient to cover the costs of removal, the Town may place a lien upon the property to cover the difference in cost.

The applicant(s) and owner(s) of the subject land shall provide the Town with written authority from the owner or owners of record for the subject property where the facility is located that shall bind all successors and assigns of the applicant(s) and owner(s) and shall allow the Town to enter onto the subject property to perform inspections for compliance with the terms of the special permit and to physically remove the facility in the event that the carrier/provider or applicant(s) or owner(s) fail to remove the facility in accordance with the requirements of this Zoning by-law.

In addition, before final approval of an application for a special permit, the owner(s) of the subject property shall provide the Town with a written agreement that shall be recorded against the property which provides that, if the town removes the facility in accordance with the provisions of this by-law, then the owner(s) of the property shall be liable for the full cost of said removal and the owner(s) consent to the recording of a lien against the property for the full amount of said costs.

3930. ADULT ENTERTAINMENT.

3910. Authority. This by-law is enacted pursuant to M.G.L. Chapter 40A and pursuant to the Town's authority under the Home Rule Amendment to the Massachusetts Constitution to serve the compelling Town interests of limiting the location of and preventing the clustering and concentration of certain adult entertainment uses, as defined and designated herein, in response to studies demonstrating their deleterious effects.

3920. Purpose. It is the purpose of this Adult Entertainment by-law to address and mitigate the secondary effects of the adult entertainment establishments and sexually oriented businesses that are referenced and defined herein. Secondary effects have been shown to include increased crime, adverse impacts on public health, adverse impacts on the business climate of the Town, adverse impacts on the property values of residential and commercial properties and adverse impacts of the quality of life in the Town. All of said adverse impacts are adverse to the health, safety and general welfare of the Town of Sandwich and its inhabitants. The provisions of this by-law have neither the purpose nor intent of imposing a limitation on the content of any communicative matter or materials, including sexually oriented matter or materials. Similarly, it is not the purpose or intent of this by-law to restrict or deny access by adults to adult entertainment establishments or to sexually oriented matter or materials that are protected by the Constitution of the United States or of the Commonwealth of Massachusetts, nor to restrict or deny rights that distributors or exhibitors of such matter or materials may have to sell, rent, distribute or exhibit such matter or materials. Neither is the purpose or intent of this by-law to legalize the sale, rental, distribution or exhibition of obscene or other illegal matter or materials.

3930. Adult Entertainment Overlay District. The Adult Entertainment Overlay District is herein established as an overlay district and shall be superimposed on other districts established in this bylaw. A plan entitled "**Adult Entertainment Overlay District**" prepared by the Cape Cod Commission; dated March 27, 1998 is on file in the Planning & Development Office delineating this district and is hereby made a part of this by-law.

3940. Definitions. In addition to the definitions contained in Article VII, the following definitions shall apply to **Section 3900**.

3900. Adult entertainment uses shall include the following uses:

- a) Adult Bookstores, as defined by M.G.L., c. 40A, §9A;
- b) Adult Motion Picture Theaters, as defined by M.G.L., c. 40A, §9A;
- c) Adult Paraphernalia Store, as defined by M.G.L., c. 40A, § 9A;
- d) Adult Video Store, as defined by M.G.L., c. 40A, § 9A;
- e) Establishment Which Displays Live Nudity For Its Patrons, as defined by M.G.L., c. 40A, § 9A.

3950. Adult Entertainment Uses by Special Permit Criteria. Adult entertainment uses shall be prohibited in all zoning districts except as otherwise permitted in this by-law and may be permitted only upon the grant of a special permit by the Zoning Board of Appeals. Such a special permit shall not be granted unless each of the following standards has been met:

- a) The application for a special permit for an adult use shall provide the name and address of the legal owner of the establishment, the legal owner of the property, and the manager of the proposed establishment.
- b) No adult use special permit shall be issued to any person convicted of violating the provisions of M.G.L. Chapter 119, § 63 or M.G.L. Chapter 272, § 28.
- c) Adult uses shall not be located within:
 - 1. 1,000 feet from the nearest church, school, park, playground, play field, youth center or other location where groups of minors regularly congregate; or
 - 2. 1,000 feet from the nearest establishment licensed under M.G.L. Chapter 138, § 12; or
 - 3. 500 feet from the nearest adult entertainment use as defined herein; or
 - 4. 500 feet from the nearest residential zoning district. The distances specified above shall be measured by a straight line from the nearest property line of the premises on which the proposed adult entertainment use is to be located to the nearest boundary line of a residential zoning district or to the nearest property line of any other designated uses set forth above.
- d) All building openings, entries and windows shall be screened in such a manner as to prevent visual access to the interior of the establishment by the public.
- e) No adult uses shall be allowed to display for advertisement or other purposes any signs, placards or other like materials to the general public on the exterior of the building or on the interior where the same may be seen through glass or other like transparent material any sexually explicit figures or words as defined in M.G.L., Chapter 272, § 31.
- f) No adult use shall be allowed to disseminate or offer to disseminate adult matter or paraphernalia to minors or suffer minors to view displays or linger on the premises.
- g) The proposed adult entertainment use shall comply with all of the parking requirements set forth in this by-law and the sign code set forth in the Sandwich Town Bylaw.
- h) No adult entertainment use shall have a freestanding accessory sign.

- i) No adult entertainment use shall be established prior to the submission and approval of site plan by the Board of Appeals. The plan shall be in accordance with **Section 1340** of this By-law.

3960. Conditions. The Zoning Board of Appeals may impose reasonable conditions, safeguards and limitations on time or use of any special permit granted and shall require that any such special permit shall be personal to the applicant, shall not run with the land and shall expire upon sale or transfer of the subject property.

3970. Expiration. A special permit to conduct an adult entertainment use shall expire after a period of three calendar years from its date of issuance and shall be automatically renewable for successive three-year periods thereafter, provided that a written request for such renewal is made to the Zoning Board of Appeals prior to said expiration and that no objection to said renewal is made and sustained by the Zoning board of Appeals based upon the public safety factors applied at the time that the original special permit was granted.

3980. Severability. The provisions of this section are severable and, in the event that any provision of this section is determined to be invalid for any reason, the remaining provisions shall remain in full force and effect.

ARTICLE IV SPECIAL REGULATIONS

4100. ACCESSORY USES

4110. Home Occupations. Home occupations are permitted if no more than thirty (30) percent of the floor area of the residence is used for the occupation, not more than one person not a member of the household is employed on the premises in the occupation, there is no exterior display or storage or other variation from the residential character of the premises, traffic generated does not exceed that normally expected in a residential neighborhood, and all parking required to service the occupation is provided off-street, other than within a required front yard.

4111. Home Occupations – Physician's Office. In addition to uses allowed under Section 4110, a physician's office is permitted as a home occupation and may employ not more than three persons not members of the household on the premises in the occupation on lots containing not less than 40,000 square feet. All parking shall be contained on the lot and be screened using natural plantings so as to be non-offensive to abutting lots. For the purpose of this section, physician is defined as a Medical Doctor licensed by the Commonwealth of Massachusetts with a practice limited to family, geriatric, pediatric or internal medicine (Added ATM 93).

4115. By-Right Accessory Apartment. An accessory apartment is allowed as an accessory use to an owner occupied single-family dwelling in residential zoning districts in accordance with the following requirements. These requirements regulate the use and are not subject to relief through a variance.

- a) The accessory apartment shall contain a maximum floor area of 800 square feet and shall not contain more than one bedroom. Common entries and open decks shall not be included in the 800 square feet calculation.
- b) Accessory apartments are permitted only on lots with an area 10,000 SF or more or on lots of any size created by a cluster special permit where the overall density of the cluster development is 10,000 SF or more per dwelling unit.
- c) In consideration of the overall density of development, accessory apartments are not allowed in single-family dwellings subject to a Comprehensive Permit, an Affordable Housing Conditional Density Special Permit or an Accessory Dwelling Unit Special Permit.
- d) A deed rider in a form acceptable to the Inspector of Buildings and Town Counsel limiting the accessory apartment to one-bedroom and as a non-rental unit in perpetuity shall be recorded at the Barnstable County Registry of Deeds and proof of such recording provided to the Building Inspector before the Building Permit or Occupancy Permit is issued.
- e) The accessory apartment may be located in an accessory structure no more than 80 feet from the primary dwelling or attached and within the single-family dwelling.
- f) Any structural addition made to the single-family dwelling to accommodate an accessory apartment must meet all applicable front, side and rear setbacks, height and lot coverage requirements.
- g) A minimum of one additional off-street parking space shall be provided, however, a separate driveway is prohibited.
- h) Only one accessory apartment shall be constructed in any single-family dwelling. Accessory apartments are prohibited on lots where there are more than one single-family, one or more two-family or one or more multi-family dwelling units.
- i) The owner of the single-family dwelling must occupy the single-family dwelling or the accessory apartment, except for bona fide temporary absences.
- j) Accessory apartments are prohibited from any use as rental units on a yearly, monthly, weekly or daily basis.

4120. Mobile Homes, Campers, and Trailers.

4121. A **mobile home** may be occupied only if incidental to construction of a permanent structure on the premises and only if granted a temporary permit by the Selectmen; or within a licensed mobile home park.

4122. A **single camper** may be occupied on any residential premises by non-paying guests for a period not exceeding thirty (30) days in any calendar year if granted a permit by the Selectmen, or may be occupied within a licensed campground.

4123. A **camper** (but not a mobile home) may be stored to the rear of a principal structure if placed so as to conform to yard requirements for accessory structures, and a mobile home or camper may be stored within a structure.

4124. Other occupancy or storage of mobile homes or campers is prohibited.

4125. No mobile homes, campers, utility trailers, or similar vehicles being offered for sale or rental as a commercial enterprise shall be stored outdoors within view of a public way. None of the above vehicles nor truck trailers nor similar vehicles shall be occupied for commercial or industrial use, except as a temporary construction office, or temporary construction storage, and no wheel-mounted sign shall be used, except within limits prescribed for permanent signs.

4130. Accessory Dwelling Units. For the purpose of promoting the development of affordable rental housing in Sandwich for year-round residents, one accessory dwelling unit per lot may be allowed by special permit from the Planning Board subject to the standards and conditions listed below:

4131. Reserved (*deleted STM 9/91*).

4132. Accessory dwellings shall not be allowed on lots of less than 40,000 square feet.

4133. Accessory dwellings shall not be larger than 1,000 square feet or thirty (30) percent of the gross square footage of the principal dwelling, whichever is larger. Gross square footage shall be defined as the total floor area of the dwelling, excluding basement, attic, or garage.

4134. Site Requirements:

- a) Accessory dwellings shall be within or attached to a principal dwelling or garage.
- b) Accessory units shall be designed so as to be as compatible as possible with existing site and neighborhood conditions.
- c) No accessory unit shall be located within any minimum front or side yard required by **Section 2600**.
- d) Two off-street parking spaces shall be provided for each accessory unit. Parking shall be screened from view as determined appropriate by the Planning Board.
- e) Use of an existing on-site septic system to service accessory units shall be permitted only upon approval of the Board of Health.

4135. All appropriate by-laws and regulations shall apply, except those inconsistent with the purpose and provisions of **Section 4130**.

4136. The **principal owner** of the property must occupy a minimum of eight (8) months as a primary residence, either the principal or accessory dwelling unit.

4137. No accessory unit shall be **separated by ownership** from the principal dwelling.

4138. All **occupants** of the accessory rental dwelling unit shall be approved by the Sandwich Housing Authority to assure compliance with the purpose of this by-law and the Affordable Housing Program as described in the 1987 Master Plan update. Specifically, accessory dwelling units must be rented to those meeting the guidelines for a low or moderate-income family. For the purpose of this section, low income families shall have an income less than eighty (80) percent of the Town of Sandwich median family income, and moderate income families shall have an income between eighty (80) and one hundred and twenty (120) percent of the Town of Sandwich median family income, as determined by the Federal and/or State Census.

4139. Application Requirements and Procedures

- a) Applicants are encouraged to submit preliminary materials for informal review by the Planning Board prior to the application for special permit.
- b) applicants for a special permit for an Accessory Dwelling Unit shall submit to the Planning Board for (4) copies of the following:
 1. a completed application form
 2. a plot plan conforming to the requirements of **Section 1220**
 3. principal elevation of the exterior of the proposed unit, at a minimum scale of 1/8" = 1'.

- c) One copy of a certified abutters list shall be submitted with the application. The applicant is responsible for the cost of legal notices. Postage stamps sufficient for the mailing of notices must be submitted with the abutters list.
- d) Procedures described in **Sections 1330, 1331, 1332 and 1360** shall be followed.

4140. Common Driveways. Common driveways, to serve up to three single-family dwellings on two separate lots are allowed by Special Permit as an accessory use, in order to address existing, significant and recognized public safety concerns. The Planning Board shall be the Special Permit Granting Authority (SPGA).

4141. Procedures. Common driveways may be allowed only in accordance with the standards and criteria set out in Section 4142 below. Special Permit applications under this section shall be accompanied by a completed application form and a plan and profile of the proposed driveway prepared and stamped by a Registered Professional Engineer and Professional Land Surveyor.

4142. Design Standards. At a minimum common driveways shall be constructed to the standard set forth in Section 5S of the Sandwich Planning Board Subdivision Rules & Regulations in effect at the time the Special Permit application is submitted unless otherwise recommended by the Town Engineer. Common driveways shall not exceed 500' in length from the lot line where the driveway intersects with the street to and including the end of the driveway on the last lot it serves.

4143. Special Permit Criteria. The Planning Board shall review all projects for conformance with the following criteria:

- a) The proposed common driveway conforms to the design standards of **Section 4142** of this by-law and will safely and adequately serve the lots for which it is intended.
- b) The proposed common driveway is designed in its proportions, orientation, materials, landscaping, and other features as to provide a desirable character complementary to and integral with existing natural features while ensuring the least impact on the land over which it is to be constructed.
- c) The Board finds that the driveway would not have a detrimental effect on the safety of the neighborhood.
- d) A deed rider has been submitted in a form acceptable to the Planning Board providing for the continued use and requiring perpetual maintenance of the common driveway by the owners of the lots to be served by the common driveway.
- e) Documents have been submitted in a form acceptable to the Planning Board creating a homeowners association with responsibility for the repair and maintenance of the common driveway by the owners of the lots on which the common driveway is to be located.
- f) The Special Permit applicant has demonstrated to the satisfaction of the Planning Board that the lots that are proposed to be served by the common driveway can also be served by individual driveways through the frontage of each lot.

4144. Conditions. In granting the Special Permit under this Section, the Planning Board may impose conditions, safeguards and limitations which it deems necessary to effectuate the intent of this Section. The Planning Board shall require as a condition of a common driveway Special Permit that the deed rider and homeowners association documents be recorded in the Barnstable County Registry of Deeds prior to construction of the common driveway.

4150. Outdoor Recreation Facility. Small-scale community recreation and sports fields or facilities may be allowed by special permit only if the following criteria are met. These requirements regulate the use and are not subject to relief through a variance.

4151. Special Permit Criteria. A special permit may be granted only if the following criteria are met. These requirements are not subject to relief through a variance.

- a) No building or other structure related to the outdoor recreation facility shall be constructed or placed on a lot with an area less than 80,000 SF. Such structures shall be single story, shall be compatible with the surrounding neighborhood and shall not exceed 500 SF. In residential districts concession stands located in permanent structures are expressly prohibited.
- b) Lighting is prohibited for fields and parking areas related to outdoor recreation facilities located in residential districts. In commercial and industrial districts lighting is permitted only between dusk and 10 PM. Where

permitted lighting structures shall not exceed the maximum height requirement for the district in which the lot is located as described in Section 2600 of this by-law.

- c) Lot coverage by buildings, structures, paving or other impervious surfaces or additions to any buildings, structures, paving or other impervious surfaces shall not exceed twenty percent (20%).
- d) Buildings or structures, including any accessory buildings or structures, shall not be located within one hundred (100) feet of any property boundary line.
- e) Off street parking shall be provided and shall not be located within one hundred (100) feet of any property boundary line and shall be screened from any public way or private driveway.
- f) Spectator seats shall not exceed one hundred (100) in number.

An outdoor recreation facility may be allowed as a second principal use of a nonresidential property at the discretion of the Special Permit Granting Authority provided that the lot area exceeds by at least 80,000 SF the SF amount of the current minimum lot area in the district within which the subject parcel is located.

4160. Residential Wind Turbines.

4161. Purpose. The purpose of this section is to provide for the development and use of residential wind power as an alternative energy source, while protecting public health, safety and welfare, and preserving environmental, historic and scenic resources.

4162. Applicability. A Residential Wind Energy System may be constructed and used as accessory to a residential use permitted in the zoning district in which it is located, in accordance with the requirements of this **Section 4160**.

4163. Definitions. The following definitions shall apply to this **Section 4160**.

Residential Wind Turbine (RWT) - A single device that converts wind to electricity or other forms of energy, typically consisting of a rotor and blade assembly, electrical generator, and tower, or appropriate mounting device, and associated control or conversion electronics which has a rated capacity of not more than 10 kw, located on a single lot, intended as an accessory use in areas zoned to allow residential use in an area zoned residential.

Height - The height of the RWT measured from the base to the blade tip at its highest point in rotation.

Fall Zone - A circle with its center at the base of the RWT and its radius equal to the RWT height.

4164. Special Permit Granting Authority. The Zoning Board of Appeals is hereby established as the Special Permit Granting Authority (SPGA) in connection with construction and use of a RWT. The SPGA shall grant a Special Permit only if it finds that the proposal complies with the purpose of this bylaw and the standards contained in **Section 4166** (unless waived), and is otherwise consistent with the **Section 1342** criteria for granting special permits.

4165. Special Permit Application Filing Requirements. In addition to special permit application requirements contained in Section 1340 the following must be submitted for an application to be considered complete.

- a) A certified abutters list.
- b) A site plan at a scale of 1" =40' which shall show the following:
 1. Location of RWT, including any guy wires and tower height.
 2. Accessory buildings, structures or proposed structures.
 3. Existing access and parking.
 4. Public and private roads adjacent to the subject property.
 5. Direct abutters.
 6. Lot boundaries.
 7. Distance to all lot boundary lines from RWT.
 8. Above ground utility lines and other significant structures on or adjacent to the lot.
 9. Existing vegetation, including the average height of trees on the lot, and identification of any vegetation to be removed.

- c) Applications shall be accompanied by standard drawings of the wind turbine structure, including the tower, base, and footings. Documentation showing compliance with the Massachusetts State Building Code shall also be submitted. (Manufacturer specifications may be suitable at the discretion of the SPGA).
- d) Proposed RWT shall conform to all applicable local, state and federal requirements, including but not limited to all applicable electrical, construction, noise, safety, environmental and communications requirements.
- e) Applicants shall provide a complete description of proposed RWT including technical, economic, environmental, and other reasons for the proposed location, height and design.
- f) Provisions for inspection and maintenance must be submitted to the satisfaction of the SPGA.
- g) RWT must comply with applicable FAA regulations, including any necessary approvals for installations close to airports.

4166. Standards.

- a) There may be no more than one (1) RWT per lot or one RWT on contiguous lots held in common ownership.
- b) Overall height or the RWT shall be measured from the land in its natural state prior to grading or filling to the highest point reached by any part of the wind turbine. The height of the RWT may not exceed 150 feet, including blade length, provided however that:
 - 1. The SPGA may waive the 150 foot height restriction and allow a greater height, not to exceed 180 feet if the applicant demonstrates that the additional height is needed and that the additional benefits of the higher RWT do not increase any adverse impacts;
 - 2. The maximum height, including blade length, shall be at least equal to, but no greater than the overall fall zone from the closest lot boundary; and
 - 3. The Height of the RWT may be subject to FAA review and approval. Applications that are within the Route 130 United States Coast Guard Emergency Visual Routes Safety Zone (see map) require mandatory FAA review and approval, should the height of the tower exceed (100) feet. All applications for RWTs within this Safety Zone will be referred at the time of submittal to the SPGA to the USCG Air Station Cape Cod for comment. If the USCG fails to submit its comments to the SPGA within thirty five (35) days of receipt of the referral request by said SPGA there shall be deemed to be no USCG opposition or desire to comment.
- c) The minimum setback (*See Figures A and B*) for the RWT shall be maintained equal to the overall fall zone from all boundaries of the lot(s) on which the RWT is located, provided that:
 - 1. No part of the RWT support structure, including guy wire anchors, may extend closer to the property boundaries than the applicable front rear and side yards (setbacks) for accessory structures in the district where the lot is located;
 - 2. RWT shall be set back a distance of at least two times the rotor diameter from public ways, easements, and above ground utility lines;
 - 3. The SPGA may reduce setback distances for the RWT provided that the abutting property owner(s) have notified the SPGA, in writing, that they have no objection.
- d) The RWT and associated equipment shall conform to the Massachusetts noise regulation (310 CMR 7.10) or the applicable provisions of the Massachusetts State Building Code as may be in effect at the time of the application.
 - 1. The applicant shall provide documentation demonstrating compliance with these noise standards and be consistent with Massachusetts Department of Environmental Protection guidance for noise measurement. Manufacturer's specifications may be accepted when in the opinion of the SPGA the information provided satisfies the above requirements.
- e) The applicant shall take reasonable measures to protect the RWT from unlawful access.
- f) The applicant may be required to employ landscaping and/or alternative siting locations, to minimize the visual impact of all RWT components.
- g) The SPGA shall consider the height of existing vegetation including the average height of trees on or adjacent to the subject lot and any proposed vegetation removal on the subject lot. The SPGA shall also consider the height of existing and proposed vegetation in maturity.
- h) All components of the RWT and its support structure shall be painted plain non-reflective muted colors without graphics or other decoration.
- i) No RWT installation shall cause electromagnetic interference. Manufacturers' specifications may be accepted when in the opinion of the SPGA the information provided satisfies the above requirements.

j) A RWT shall not be artificially lighted unless the FAA or other applicable authority requires such lighting. A temporary light may be used to inspect the turbine, tower, and associated equipment, providing said light is only used for inspection purposes and not left on for an extended period of time.

4167. Other Conditions.

- a) The SPGA may require the applicant to retain a technical expert/consultant, acceptable to the SPGA, to address issues relevant to the application. The cost for such a technical expert/consultant will be at the expense of the applicant.
- b) The applicant shall be required to maintain the RWT in good condition. Such maintenance shall include, but not be limited to, the structural integrity of the RWT structure and other apparatus, proper blade maintenance, and inspections, in accordance with the manufacturer's guidelines.

4168. Modification. All modifications to a RWT proposed to be made after issuance of the Special Permit shall require additional approval by the SPGA.

4169. Abandonment or Discontinuation Of Use. A RWT special permit shall lapse if the RWT is not operated for a period of two years, or if the Building Inspector has designated the RWT as a safety hazard and ordered it removed. Once a RWT special permit has lapsed, the owner shall be required to physically remove the RWT within 90 days of written notice. "Physically remove" shall include, but not be limited to:

- a. Removal of RWT, any equipment shelters and security barriers from the subject property.
- b. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.

4170. Monitoring. Upon written notification of a complaint of excessive noise, the Building Inspector or a designee shall record the filing of such complaint. The Building Inspector or a designee shall promptly investigate. If noise levels are determined to be excessive, per (310 CMR 7.10) or the Massachusetts State Building Code applicable sections in effect at the time of application, the Building Inspector or a designee shall require the property owner to perform ambient and operating decibel measurements at the nearest point from the wind turbine to the property line of the complainant and to the nearest complainant inhabited residence. If the noise levels are found to have exceeded allowable limits the Building Inspector or a designee shall notify in writing the owner of the property to correct the violation. If the noise violation is not remedied within 30 days the RWT shall remain inactive until the noise violation is remedied.

(STM 1/14/08)

4180. LARGE SCALE GROUD MOUNTED SOLAR PHOTOVOLTAIC INSTALLATIONS.

The Planning Board shall be the Special Permit Granting Authority for applications pertaining to sites outside the Industrial Limited District and the Ground Mounted Solar Overlay District.

The Ground Mounted Solar Overlay District is herein established as an overlay district and shall be superimposed over any other district established by this by-law. A plan entitled "Solar Overlay District" dated July 1, 2015 is on file in the Planning and Development Office delineating this district and is hereby made a part of this By-Law.

4181. Purpose

The purpose of this bylaw is to promote the creation of new large scale ground-mounted solar photovoltaic installations by providing standards for the placement, design, construction, operation, monitoring, modification and, in certain cases, removal of such installations which standards address compatibility with adjoining residential neighborhoods, public safety and minimizing impacts on scenic, natural and historic resources.

The provisions set forth in this section shall apply to the construction, operation, change and/or repair of large scale ground-mounted solar photovoltaic installations which individually have a rated name plate capacity of 250 kW (DC) or more.

4182. Procedure

Large scale ground-mounted solar photovoltaic installations located within the Industrial Limited District and the Ground Mounted Solar Overlay District are allowed by right subject to compliance with sections 4180 through 4196 and other applicable sections of this bylaw.

Large scale ground-mounted solar photovoltaic installations located in R-2, RD-1 and RD-2 are allowed by Special Permit as provided in Section 1340 and subject to Sections 1480 through 1496 and other applicable sections of this bylaw.

4183. Applicability

Sections 4180 through 4196 apply to large scale ground -mounted solar photovoltaic installations proposed to be constructed after the effective date of these sections. These sections also pertain to physical modifications that materially alter the type, configuration, or size of these installations or related equipment.

4184. Compliance with Laws, Ordinances and Regulations

The construction and operation of all large scale solar photovoltaic installations shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar photovoltaic installation shall be constructed in accordance with the State Building Code.

4185. Building Permit and Building Inspection

No large scale solar photovoltaic installation shall be constructed, installed or modified as provided in this section without first obtaining a building permit.

4186. Application Requirements for Building Permit and Special Permit

- a. A site plan showing (i) property lines and physical features, including roads, for the project site, (ii) proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation and structures, (iii) designated primary access from a public way to the site and (iv) other features as set forth in **Section 1340** and not specifically set forth herein;
- b. Blueprints or drawings of the solar photovoltaic installation signed by a Professional Engineer licensed in Massachusetts showing the proposed layout of the system and any potential shading from nearby structures and off- site vegetation;
- c. One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over-current devices;
- d. Documentation of the major system components to be used, including the PV panels, mounting system, and inverter;
- e. Name, address, and contact information for proposed system installer;
- f. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
- g. The name, contact information and signature of any agents representing the project proponent;
- h. An Emergency Response to be provided to the Fire Chief which shall include a copy of the project summary, electrical schematic, and site plan. All means of shutting down the solar photovoltaic installation shall be clearly indicated. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation;
- i. An Operations and Maintenance Plan including measures for maintaining safe and controlled vehicle access to the installation, storm water controls, erosion controls as well as general procedures for operational maintenance of the installation. Maintenance shall also include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Medical Services. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation and any on-site access road(s);
- j. Proof of liability insurance;
- k. A fully inclusive estimate of the costs associated with removal of the facility if required by Section 4195 prepared by a qualified person. The amount shall include a mechanism for calculating increased removal costs due to inflation;
- l. Description of financial surety that satisfies **Section 1495** if on town land.

The Planning Board or Building Inspector, as appropriate to the particular application, shall have the discretion to waive specific documentary requirements.

4187. Other Special Permit Conditions

- a. The Planning Board may also impose, in addition to any applicable conditions specified in this bylaw, such conditions as it finds reasonably appropriate to safeguard the neighborhood or otherwise serve the purposes of this bylaw, including, but not limited to: screening, lighting, fences, limitation upon size, method of access or traffic features, parking, removal upon cessation of use, or other requirements. Such conditions shall be imposed in the Special Permit decision and the applicant may be required to post bond or other surety for compliance with said conditions in an amount satisfactory to the Board.
- b. The Planning Board may require the proponent to provide or pay for peer review engineering services, including but not limited to the following: to evaluate proposals submitted; determining flexibility of geographic location, loading capacities of structures, and architectural and landscape review of camouflage techniques.

4188. Site Control

The project proponent shall submit documentation of existing or contractual rights to access and control of the project site sufficient to allow for construction and operation of the proposed solar photovoltaic installation.

4189. Utility Notification

No large scale ground-mounted solar photovoltaic installation shall be constructed until evidence has been given to the Planning Board that the utility company that operates the electrical grid where the installation is to be located has been informed of the solar photovoltaic installation owner or operator's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

4190. Dimensional and Density Requirements

All sites and construction thereon shall conform to the area, frontage, building height, coverage and setbacks set forth in Section 2600 of this bylaw appropriate for the zoning district in which the installation is located except that the minimum lot area in R-2, RD-1 and RD-2 shall be 15 acres. The 15 acre minimum lot area may be reduced by special permit if after hearing, the Planning Board finds that a smaller lot area will meet the standards and purposes of Sections 1330 and

4181 through 4195 and approves a specific smaller lot area. Lot coverage calculations shall not include the area of the solar panels.

4191. Appurtenant Structures

All appurtenant structures to large scale ground-mounted solar photovoltaic installations shall be subject to bulk, height, yard, parking and coverage regulations of this bylaw. All such appurtenant structures, including but not limited to office buildings, equipment shelters, storage facilities, workshops, transformers, and substations, shall be architecturally compatible with each other and adjacent development. Whenever reasonable, structures should be screened from view by vegetation and/or joined or clustered to minimize visual impacts on adjacent properties.

4192. Design Standards

1. Lighting

Lighting of large scale solar photovoltaic installations shall comply with Section 3470 and shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting of the large scale solar photovoltaic installation shall be directed downward and shall incorporate full cut -off fixtures to reduce light pollution.

2. Signage

A sign consistent with the Town's sign bylaw shall be required at the entrance of the site to identify the owner and provide the business name for the companies that own and operate the installation, their business address, the name of a contact person, and a 24-hour emergency contact phone number. Large scale solar photovoltaic installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar photovoltaic installation.

3. Site design

The site shall be designed to minimize adverse impacts on adjacent properties used or zoned for residential purposes. Perimeter setback areas of Section 2600 shall be vegetated to provide screening.

4193. Utility Connections

Reasonable efforts, as determined by the Planning Board, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

4194. Land Clearing, Soil Erosion and Habitat Impacts

Notwithstanding any other provisions of this bylaw, clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the large-scale ground mounted solar photovoltaic installation. Effective storm water and erosion controls shall be maintained at all times.

4195. Maintenance and Modification

1. The owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to landscape screening, painting, structural repairs and integrity of security measures. Site access shall be maintained to a level reasonably acceptable to the Fire Chief and, if different, Emergency Medical Services. The owner or operator shall also be responsible for maintaining the designated primary site access road(s) from the facility to a public way.
2. All material modifications to a solar photovoltaic installation made after issuance of the required building permit shall be in compliance with Sections 4180-4196 and all other applicable sections of this bylaw.

4196. Decommissioning on Town Owned Land

1. Any large scale ground -mounted solar photovoltaic installation, if located on town owned land, which has reached the end of its useful life or has been abandoned shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the building Inspector by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:
 - a. Physical removal of all large scale ground-mounted solar photovoltaic installations, structures, equipment, security barriers and transmission lines from the site;
 - b. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations; and
 - c. Stabilization or re-vegetation of the site as necessary to minimize erosion.
2. A removal bond shall be provided to cover the costs of removal of the facility, in an amount and form determined to be reasonable by the Building Inspector, but not to exceed more than 125 percent of such costs.

4200. EARTH MOVING REGULATIONS

4210. General. Removal or filling of topsoil, borrow, rock, sod, loam, peat, humus, clay, sand or gravel shall be done only in accordance with **Section 4220 through 4250, except that the following need not obtain a special permit:**

4211. The removal of less than fifty (50) cubic yards or placing of less than two hundred (200) cubic yards of material. Septic system upgrades or initial installations shall be exempt.

4212. Removal or filling incidental to construction on the premises, where such removal or filling is explicitly allowed under a currently valid building permit or under agreements governing road construction in an approved subdivision or on a public way.

4213. Removal or filling at an active cranberry bog incidental to the operation thereof.

4220. Permit From The Board Of Appeals. Written application for a special permit must be made to the Board of Appeals. **The following shall be conditions for such issuance:**

4221. The application shall be accompanied by a plan describing the premises and the proposed operation. **If involving more than two (2) acres or 2,000 cubic yards.**

- The plan shall be prepared by a Registered Land Surveyor or Engineer showing property lines,
- Names and addresses of all abutters, including those across any street or way,
- Existing grades in the area from which the above material is to be removed and in surrounding areas,
- Together with the grades below which no excavation shall take place, and
- The proposed cover vegetation and trees.

4222. A **performance bond** in an amount determined by the Board of Appeals has been posted in the name of the Town assuring satisfactory performance in the fulfillment of the requirements of this by-law and such other conditions as the Board of Appeals may impose as conditions to the issuance of its permit.

4223. Before granting a permit, the Board of Appeals shall give due consideration to the location of the proposed earth removal, to the general character of the neighborhood surrounding such location, and to the general safety of the public on the public ways in the vicinity.

4230. Filling. Building permits or special permits allowing filling shall be granted only upon demonstration of the following:

4231. That the requirements of **Section 4300** (Flood Plain District Requirements) are to be complied with.

4232. That the requirements of **Section 4220** (Restoration) will be complied with within six (6) months of expiration of the building permit or issuance of a Certificate of Occupancy under **Section 1230**, or within one year of issuance of a special permit for filling.

4233. That **reasonable care** will be taken to avoid harmful diversion of water onto adjoining properties. The Building Inspector may require a bond to secure compliance in cases involving both two (2) acres or more and 10,000 cubic yards or more of fill.

4240. Restoration. Forthwith, following expiration or withdrawal of a permit, or upon voluntary cessation of operations;

- All land shall be graded leaving no slopes in excess of one foot vertical to two (2) feet horizontal,
- Providing for surface drainage,
- Boulders and stumps buried or disposed of,
- And the entire area covered with not less than four (4) inches of topsoil,
- Planted with cover vegetation, which shall have been established prior to release of the bond.

4250. Stockpiling. Topsoil stripped and stockpiled in preparation for construction or for earth removal shall be restored to its original distribution within thirty-six (36) months of such stripping unless a valid building permit or earth removal permit is in force.

4300. FLOOD PLAIN DISTRICT. Purpose.

The purpose of these regulations is to ensure public safety by reducing personal injury and threats to life; to eliminate new hazards to emergency response officials; to prevent public emergencies resulting from water contamination due to flooding; to avoid the disruption or shutdown of the utility network due to flooding, to the detriment of areas beyond the flooding site; to eliminate costs associated with the response and cleanup of flooding conditions; and to reduce flood damage to public and private property.

4310. Creation.

The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas within the Town of Sandwich designated as Zone AE, AO, or VE on the Barnstable County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Barnstable County FIRM that are wholly or partially within the Town of Sandwich are panel numbers 25001C0317J, 25001C0319J, 25001C0336J, 25001C0338J, 25001C0339J, 25001C0343J, 25001C0506J, 25001C0507J, 25001C0508J, 25001C0509J, 25001C0512J, 25001C0514J, 25001C0516J, 25001C0517J, 25001C0518J, 25001C0519J0526J, 25001C0527J, 25001C0528J, 25001C0529J, 25001C0531J, 25001C0532J, 25001C0533J, 25001C0534J, 25001C0536J, 25001C0537J and 25001C0541J dated July 16, 2014. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on

the FIRM and further defined by the Barnstable County Flood Insurance Study (FIS) report dated July 16, 2014. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Official, Conservation Commission and Town Engineer.

4320. Definitions. For the purpose of this section of the Zoning By-Law, terms shall be defined as follows:

BASE FLOOD - The flood having one percent chance of being equaled or exceeded in any given year.

COASTAL HIGH HAZARD AREA - The area subject to high velocity waters, including but not limited to tidal waves or hurricane wave wash. The area is designated on the FIRM as Zone VE.

DEVELOPMENT - Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

DISTRICT - Flood Plain District.

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) - The agency which administers the National Flood Insurance Program and provides nationwide flood hazard area mapping and regulatory standards for development in flood hazard areas.

FLOOD HAZARD BOUNDARY MAP (FHBM) - An official map of a community issued by FEMA where the boundaries of the flood mudslide (i.e. mudflow), or related erosion areas having special hazards have been designated as Zones A, M and/or E.

FLOOD INSURANCE RATE MAP (FIRM) - means an official map of a community on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY (FIS) - An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e. mudflow) and/or flood related erosion hazards.

MANUFACTURED HOME - A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" shall also include park trailers, travel trailers and other similar vehicles.

NEW CONSTRUCTION - Structures for which construction commenced on or after the effective date of the Town's Flood Plain District regulations.

ONE-HUNDRED-YEAR FLOOD - See Base Flood.

SPECIAL FLOOD HAZARD AREA - The land within a flood plain subject to a one- percent or greater chance of flooding in any given year. The area may be designated on the FIRM as Zone A, AO, AI-30, AE, A99, AH, V, V1- 30, and VE.

STRUCTURE - A walled and roofed building, a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

SUBSTANTIAL IMPROVEMENT - Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged, before the damage occurred. "Substantial improvement" shall be deemed to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

ZONE A - The 100-year flood area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local or other data.

ZONE AE - The 100-year flood area where the base flood elevation has been determined.

ZONE AH AND ZONE AO - The 100-year flood area with flood depths of one (1) to three (3) feet. ZONE A99 - Areas to be protected from the 100-year flood by a federal flood protection system under construction. BFE's have not been determined.

ZONE VE - See Coastal High Hazard Area.

4330. Compliance With State, Federal and Local Regulations.

All development activities within the District, whether structural or non-structural, shall comply with MGL Chapter 131, Section 40 and with all other applicable state regulations, unless a variance is granted according to the variance procedures required for such regulations, including:

- 780 CMR of the Massachusetts State Building Code or applicable sections of the Massachusetts State Building Code in effect at the time of the application which addresses flood plain and coastal high hazard areas;
- 310 CMR 10.00, Wetlands Protection Regulations, Department of Environmental Protection (DEP);
- 310 CMR 13.00, Inland Wetlands Restriction, DEP;
- 310 CMR 12.00, Coastal Wetlands Restriction, DEP;
- 310 CMR 15, Title 5, Minimum Requirements for the-Subsurface Disposal of Sanitary Sewage, DEP.

Any required federal or state permit shall be obtained prior to the issuance of a development permit. Further, the Town of Sandwich Wetlands Protection Bylaw and all Sandwich Board of Health regulations shall be adhered to.

In addition, the following requirements shall apply:

4340.

- No building permit shall be issued for construction where any land to be excavated or filled in conjunction with such construction is below the base flood elevation unless granted a special permit for an exception by the Board of Appeals. Such special permit shall be issued only upon demonstration by the applicant that the proposed development will pose no hazard to the health and safety of the occupants thereof and meets Flood Plain District requirements.
- In Zone AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- In a riverine situation, The Department of Natural Resources shall notify the following of any alteration or relocation of a watercourse:
 - Adjacent Communities
 - NFIP State Coordinator
Massachusetts Department of Conservation and Recreation
251 Causeway Street, Suite 600-700
Boston, MA 02114-2104
 - NFIP Program Specialist
Federal Emergency Management Agency, Region I
99 High Street, 6th Floor
Boston, MA 02110
- Within Zone AO on the FIRM, adequate drainage paths must be provided around structures on slopes, to guide floodwaters around and away from proposed structures.
- Man-made alteration of sand dunes within Zone VE which would increase potential flood damage are prohibited.
- All new construction within Zone VE must be located landward of the reach of mean high tide.
- All subdivision proposals must be designed to assure that:
 - a) such proposals minimize flood damage;
 - b) all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
 - c) adequate drainage is provided to reduce exposure to flood hazards.

4350. Without limiting the generality of the foregoing, the following are presumed to be hazardous to health and safety:

- a) Floor level, including basement or cellar of any structure, below the base flood elevation.
- b) Individual sewage disposal systems subject to inundation in the event of coastal flooding during a 100-year flood event.
- c) Methods of filling or foundations subject to displacement by coastal flooding during a 100-year flood event.
- d) Water supply subject to interruption or contamination in the event of coastal flooding during a 100-year flood event.

Within ten (10) days of receipt of the application, the receiving agency shall transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health, Town Engineer, and Building Inspector. Final action shall not be taken until reports have been received from the above agencies or until thirty-five (35) days have elapsed.

4360. No fill may be placed on any lot, any portion of which is at or below the base flood elevation, without a special permit.

4400. CLUSTER DEVELOPMENT. (Entire section amended May 1, 1995)

4410. Objective. The objective of Cluster Development is to allow relatively intensive use of land while, at the same time, maintaining the existing character; to preserve open space for conservation and recreation; to introduce variety and

choice into residential development; to meet housing needs; and to facilitate economic and efficient provision of public services. Cluster Development is the preferred form of development for any proposed project that can comply with the requirements of **Section 4400**.

4420. Applicability. The Planning Board may grant a special permit for the construction and occupancy of a Cluster Development in any district permitting residences subject to the following regulations and conditions.

4430. Procedure.

4431. Pre-Application Review. To promote better communication and avoid misunderstanding, applicants are encouraged to submit preliminary materials for informal review by the Planning Board prior to formal application.

4432. Submission. Proposed Cluster Developments shall comply with the "Cluster Development Special Permit Regulations" of the Sandwich Planning Board. A Cluster Development shall encompass at least twice the lot area required in the district. A new or existing Cluster Development may include a Village Cluster, which meets the requirements of **Section 4444** of the Sandwich Zoning By-laws. In the case of an application to amend an existing Cluster Special Permit to permit a Village Cluster, the procedures in **Section 4440** through **Section 4448**, inclusive shall apply, except as to such materials as the Planning Board may waive as duplicative of materials previously submitted.

4440. Requirements. In addition to compliance with the "Cluster Development Special Permit Regulations" of the Sandwich Planning Board and M.G.L. Chapter 40A, Section 9, a Cluster Development must conform to the following:

4441. Number of Dwelling Units. The maximum number of dwelling units allowed in a Cluster Development shall be calculated as follows (Amended ATM 2007):

- a) Equal the number of units that could be constructed with a conventional grid subdivision that complies with the zoning in the district and the Subdivision Rules and Regulations of the Planning Board, and any other applicable laws or regulations of the Town. A preliminary layout (Demonstration Plan) of a conventional grid subdivision meeting the above requirements shall be submitted to demonstrate the allowable number of units.
- b) The Planning Board may refer a Demonstration Plan to any other Town agency/board/department for comments and recommendations if it so desires before closing the public hearing on the Cluster Development application. Any such agency/board/department to which Demonstration Plans are referred to for comments must make its comments and send copies thereof to the Planning Board and the applicant within thirty-five (35) days of receipt of the referral request by said agency/board/department or there shall be deemed no opposition or desire to comment.
- c) Where the Cluster Development includes more than one ownership and/or lies in more than one zoning district, the number of units allowed shall be calculated as above for each district and summed to give an overall allowable total.

4442. Allowable Uses. Uses allowed shall be only those allowed in the district in which the proposed cluster is located.

4443. Dimensional Regulations.

4443. Flexible Dimensions for Cluster Lots. Lot area, frontage, yard and coverage regulations shall be the following, in lieu of the requirements in Section 2600:

Minimum Lot Area	5,000 SF
Maximum Lot Area	40,000 SF
Minimum Lot Frontage	50 ft.*
Maximum Lot Frontage	75 ft.*
Minimum Front Yard	15 ft.
Minimum Side and Rear Yard	12 ft.**
Maximum Lot Coverage:	
5000 SF To 10000 SF	45%
10001 SF To 20000 SF	35%
20001 SF To 30000 SF	30%
30001 SF To 40000 SF	25%

* But not less than 150 feet if on an arterial street.

Except not less than the requirements of Section 2600 for yards in the development abutting property not located within the Cluster Development. **Accessory buildings shall not be located within six feet of any property line including property lines shared in common with open space parcels, but shall not be less than the requirements of Section 2600 for yards abutting property not located within the Cluster Development.

4444. Village Cluster Regulations. Village Clusters are prohibited unless they are a part of a Cluster Development. The following regulations apply to Village Clusters:

- a) The lots in the aggregate comprising each Village Cluster shall encompass a minimum of four acres and a maximum of ten acres of land that is contiguous, separated only by open space, streets or ways or bodies of water; and
- b) A Cluster Development may have one or more Village Clusters but no more than twenty-five (25%) percent of the lots within a Cluster Development shall be designated as Village Cluster lots; and
- c) Construction on a Village Cluster lot shall be limited to a single family house of not more than two bedrooms (as that term is defined in Article VII hereof), with a garage or one other accessory building; and
- d) Village Cluster lots shall not gain their frontage from Arterial or Collector streets; and
- e) For all Cluster Developments, which include a Village Cluster, the Planning Board shall make a finding that such Cluster Development includes recreational amenities, which are intended primarily for the use of residents of the Cluster Development. Such amenities shall include at least one of the following:
 1. A community building for social or sporting activities no less than 3500 square feet
 2. A golf course no smaller than a regulation 9 hole or an 18-hole par 3.
 3. A pond used for swimming and recreational purposes.
- f) In lieu of the otherwise applicable requirements for the Cluster Development, lot area, frontage, yard, and lot coverage regulations for a Village Cluster shall be the following:

Minimum Lot Area*	5000 SF
Maximum Lot Area	½ the applicable lot area
Minimum Lot Frontage	30 ft.*
Maximum Lot Frontage	50 ft.
Minimum Front Yard	15 ft.
Minimum Side and Rear Yard **	12 ft.
Maximum Lot Coverage:	
5000 To 10000 SF	45%
10001 To 20000 SF	35%
20001 To 30000 SF	30%
30001 To 40000 SF	25%

* No part of the lot area employed for zoning compliance shall be further from the street line than a distance equal to five (5) times the lot frontage.

Except not less than the requirements of Section 2600 for yards in the development abutting property not located within the Cluster Development. **Accessory buildings shall not be located within six feet of any property line including property lines shared in common with open space parcels, but shall not be less than the requirements of Section 2600 for yards abutting property not located within the Cluster Development.

4445. Reserved for future use.

4446. Open Space. In addition to compliance with the "Cluster Development Special Permit Regulations" of the Sandwich Planning Board and M.G.L. Chapter 40A, Section 9, Cluster Developments must conform to the following open space requirements: Common open space shall be preserved for recreation or conservation, and shall comprise not less than thirty (30) percent of the entire proposed development, excluding land subject to either inland or coastal wetland regulations (Section 40, Chapter 131, MGL). Building coverage shall not exceed five (5) percent within the area designated as open space.

4447. Cluster Development Criteria For Approval. Approval of a Cluster Development shall be granted upon Planning Board determination that the plan complies with the requirements of Section 4430 and 4440 and that the Cluster Development Plan is superior to a conventional subdivision plan in all of the following ways:

- a) In preserving open space for conservation or recreation;

- b) In utilizing natural features of the land;
- c) In allowing more efficient provision of streets; utilities, and other public services;
- d) And at least equal to a conventional plan in other respects.

4448. Village Cluster Criteria For Approval. If a Cluster Development includes a Village Cluster, the Planning Board shall make a determination that the Village Cluster is superior to a conventional subdivision plan in each of the following ways:

- a) Preserving natural areas; and
- b) Providing, through the proposed landscaping and siting of structures, an integrated over-all design, enhanced visual effect and a reduced impact on the environment; and
- c) The Cluster Development of which it is a part has recreational amenity in accordance with **Section 4444e**. The Village Cluster approval shall not reduce the required amount of Open Space for the Cluster Development or permit the Cluster Development to have more dwelling units than would otherwise be applicable.

4450. Affordable Housing Conditional Density Development

4451. Purpose And Authority. The purpose of **Section 4450** is to further the goal of encouraging a variety of affordable housing types for persons of various age and income levels in accordance with Massachusetts General Laws, Chapter 40A, Section 9 which allows municipalities to adopt "incentive" ordinances for the creation of affordable housing, and for the purpose of:

1. Helping residents and their families who, because of rising land prices, have been unable to obtain suitable housing at an affordable price and,
2. Maintaining a stable economy by preventing out-migration of residents who are an essential part of our community.

The Planning Board may grant a special permit that allows an increase in density through a relaxation of dimensional requirements of the Sandwich Protective Zoning By-law as described in **Section 4453**. Any special permit granted pursuant to this section shall require that a percentage of all units developed on the site be sold and maintained at affordable prices according to the standards contained in **Section 4453 and 4455**.

For the purpose of **Section 4450** the Planning Board shall be the Special Permit Granting Authority (SPGA).

4452. Procedures. Density increases shall only be allowed in accordance with the requirements and restrictions set out in **Section 4453 and 4455** of this by-law. **A Conditional Density Affordable Housing Development shall not have more than 40 dwelling units.** Any Special Permit application under this section shall also be accompanied by a definitive plan application, showing the proposed lots and roadways, which shall be advertised and noticed according to the provisions of the M.G.L. Chapter 41, Section 81. The Planning Board public hearings for the Special Permit and the Definitive Plan shall run concurrently. As a further incentive for the construction of affordable housing the Board may, at its discretion and upon written request from the applicant, waive certain standards for requirements set forth in the Sandwich Planning Board Subdivision Rules and Regulations.

4453. Standards.

- a) **Number Of Dwelling Units** (Amended ATM 2007). The number of units allowed in an Affordable Housing Conditional Density Development shall be as follows:

Homeownership		
Number of Dwelling Units	Percent Affordable	Maximum number of units allowed
4 Units per acre	100% Affordable Units	40
2 Units per acre	50% Affordable Units	20
Rental		
I Bedroom Units or Units Deed Restricted to Age 55 and older*		
Number of Dwelling Units	Percent Affordable	Maximum number of units allowed
10 Units per acre	100 % Affordable Units	40
6 Units per acre	25% Affordable Units	20
2 Bedroom Units		
Number of Dwelling Units	Percent Affordable	Maximum number of units allowed
4 Units per acre	50% Affordable Units	20

* Occupancy of such units shall be limited to persons fifty-five years of age or older and their dependents, as may be permitted under applicable state and/or federal regulations.

Flexible Dimensional Regulations. Lot area, frontage, yard and coverage regulations shall be the following in lieu of the requirements in section 2600:

Maximum Lot Coverage:				
Lot area	5000 SF	To	10000 SF	45%
Lot area	10001 SF	To	20000 SF	35%
Lot area	20001 SF	To	30000 SF	30%
Lot area	30001 SF	To	40000 SF	25%
Minimum Front Yard	15 ft.			
Minimum Lot Frontage	50 ft.*		Maximum Lot Frontage	75ft*
Minimum Side and Rear Yard	12 ft.**			

* But not less than 150 feet if on an arterial street.

** Except not less than the requirements of Section 2600 for yards in the development abutting property not located within the Affordable Housing Conditional Density Development. **Accessory buildings** shall not be located within six feet of any property line including property lines shared in common with open space parcels, but shall not be less than the requirements of Section 2600 for yards abutting property not located within the Affordable Housing Conditional Density Development.

- b) **Design Standards.** Affordable housing units created through this by-law shall be harmonious with the rest of the development and shall be similar in design, appearance, construction, and quality of materials with other units in the development and with the surrounding neighborhood.
- c) **Lottery** (Amended ATM 2007). The lottery for any affordable units permitted under this section shall be conducted before the issuance of any certificate of occupancy for the affordable units. The Planning Board shall designate a lottery agent as a condition of the special permit.
- d) **Phasing.** A schedule of construction that provides for the timely delivery of affordable units must be submitted to and approved by the Planning Board prior to the endorsement of the Definitive Plan.
 - 1. In no case shall building permits be issued for more than 25% of the market rate units until 25% of the affordable units are constructed. After the initial 25% of the market rates units and 25% of the affordable units are constructed, building permits for the remainder of the units shall only be issued on a 1 to 1 basis, that is 1 affordable than 1 market rate and so on until all the affordable units are permitted and constructed. The last unit permitted and constructed shall be a market rate unit.
 - 2. The project may also be constructed in its entirety with all permits applied for at one time provided that the occupancy permits are issued with an initial phase of no more than 25% of the market-rate units being issued certificates of occupancy until 25% of the affordable units are issued certificates of occupancy. After this initial phase, certificates of occupancy shall only be issued on a 1 to 1 basis that is 1 affordable and 1 market-rate and so on until all the affordable units have certificates of occupancy. The last unit to be issued a certificate of occupancy shall be a market rate unit.
 - 3. Projects that are 100% affordable are not subject to phasing.

4454. Special Permit Criteria. The Planning Board will review all projects for conformance with the following criteria:

- a) The proposed development conforms to the design standards of this by-law and will deliver the affordable units according to the provisions of Section 4453d.
- b) The proposed development site plan is designed in its proportions, orientation, materials, landscaping, and other features as to provide a stable and desirable character complementary to and integral with the natural features.
- c) The Board finds that the development and commensurate density increase does not have a detrimental effect on the character of the neighborhood or community and is consistent with the performance standards of the Sandwich Protective Zoning By-law.
- d) The proposed development is consistent with all municipal comprehensive plans, policies and objectives.

4455. Long Term Affordability. As a condition to any special permit issued under Section 4450 All affordable housing units created under Section 4450 shall be subject to an affordable housing restriction and a regulatory agreement in a form acceptable to the Planning Board. The special permit shall not take effect until the restriction, the regulatory agreement and the special permit are recorded at the Registry of Deeds and a copy provided to the Planning Board and the Inspector of Buildings.

a) **Affordable Housing Restrictions**

1. **Homeownership Units.** The Restriction shall provide that units made available for ownership shall be made available at a cost including mortgage interest, principal, taxes, insurance and common charges not exceeding 30% of annual income for a household at or below 70% of the Area Median Income (AMI) of the Barnstable-Yarmouth Metropolitan Statistical Area (MSA), and shall be sold to households earning at or below 70% of the Area Median Income (AMI) of Barnstable-Yarmouth MSA. The Restriction shall limit the re-sale price of any ownership units, and shall bind all subsequent purchasers in perpetuity, consistent with Massachusetts Department of Housing and Community Development's (DHCD) regulations and guidelines under Chapter 40B of the Massachusetts General Laws.
2. **Rental Units** (Amended ATM 2007). The Restriction shall provide that units made available for rental shall be rented to a person or family whose income is 80% or less of the Area Median Income (AMI) of Barnstable-Yarmouth Metropolitan Statistical Area (MSA). The rent, including heat but not other utilities, shall not exceed the rents established by the Department of Housing and Urban Development (HUD) for a household whose income is 80% or less of the median income of MSA. In the event that utilities are separately metered, the utility allowance established by the Sandwich Housing Authority shall be deducted from HUD's rent level.

b) **Regulatory Agreement.** The resale of affordable units created under this section shall be governed by the regulatory agreement executed as a condition of any special permit granted under this section. Eligible purchasers are given the opportunity to purchase the Affordable Units at a reduced price of the Affordable Unit's appraised fair market value if the purchaser agrees to convey the Affordable Unit on resale:

1. To an eligible purchaser located by the Town of Sandwich or the Monitoring Agent or the property owner or,
2. To the Town of Sandwich, for an amount equal to the Maximum Resale Price, which is determined by multiplying the most recent published area median income as determined by the United States Department of Housing and Urban Development ("HUD") (the "Base Income Number") by the Maximum Resale Price Multiplier. Maximum Resale Price Multiplier is calculated at the initial sale by dividing the Initial Sales Price by the Base Income Number.

4456. Application Requirements.

a) **Special Permit.** Applicants for a Special Permit under this section shall include the following materials with the application:

1. A completed application form.
2. A plan depicting existing conditions and a general description of existing conditions for abutting properties; the nature and location of existing buildings on the property or within 300' of the property line; existing street layouts and elevations and open spaces within the neighborhood of the property.
3. Preliminary, scaled architectural drawings, signed by a registered architect, for each proposed building as well as elevations for each building. In the case of rental properties these plans shall include floor plans for each unit proposed.
4. A tabulation of proposed buildings by type, size including number of bedrooms; lot coverage by structure and all impervious areas; and any additional area to be developed for any use for example parking, driveways, lawns, gardens and so forth.
5. A preliminary utilities plan.
6. Draft documents that comply with the provisions of Section 4455. Such documentation shall also include the proposed affordable housing unit sales price or rental amounts.

b) **Definitive Plan.** Applicants for a definitive plan pursuant to Section 4450 shall include the following materials with the application:

1. A completed application form (Form C).
2. A municipal lien certificate.

3. Subdivision plans prepared according to the requirements of the Sandwich Planning Board Subdivision Rules & Regulations.

4500. Mixed Use Cluster Development Regulations

4501. Objective. Create vibrant mixed use developments and housing, including workforce housing, by allowing residential use to be incorporated into second and third floors of certain new or existing commercial structures in accordance with the provisions of this Section.

4502. Applicability. The Zoning Board of Appeals may grant a special permit for the construction and occupancy of a Mixed Use Cluster Development subject to Sections 1330-1342 and the additional following regulations and conditions.

4503. Mixed Use Cluster Provisions. A Mixed Use Cluster special permit may be issued to authorize construction of a mixed use structure of at least two stories, or to convert or expand a Major Commercial Complex structure by adding a second or third story.

4504. Residential Restrictions

1. The floor area of residential use shall be limited to the second or third story;
2. Individual residential units shall contain a minimum of 800 square feet of floor area; and
3. The average number of bedrooms for the entirety of any proposed Mixed Cluster Development shall not exceed 1.5. For the purposes of determining compliance with this standard, any proposed studio units shall be considered one-bedroom units.

4505. Affordability Restrictions/Regulatory Agreement

A minimum of 15 percent of all proposed units shall be restricted to families earning low to moderate income as defined by the Massachusetts Department of Housing and Community Development. Fractions of a unit shall be rounded to the nearer whole number. Any special permit granted pursuant to this section shall require that these units be sold and maintained in accordance with the following provisions:

Any special permit granted hereunder shall contain a condition that a permanent deed restriction shall be recorded against the property to require permanent affordability of all the affordable units prior to or simultaneously with the recording of the special permit, which shall require that no occupancy of any unit in the project shall occur unless and until the affordable units have been determined as eligible for inclusion upon occupancy of the unit on the Town's Subsidized Housing Inventory as maintained by the Department of Housing and Community Development or any successor agency and as provided for under the applicable state regulations for inclusion upon completion of construction and occupancy.

The permanent restriction shall be released in the event that, either the special permit is not exercised by completing the construction and uses allowed thereunder before it expires or the permanent restriction is released by majority vote of the Board of Selectmen.

Regulatory Agreement

The resale of affordable units created under this section shall be governed by the regulatory agreement executed as a condition of any special permit granted. Eligible purchasers are given the opportunity to purchase the Affordable Units at a reduced price of the Affordable Unit's appraised fair market value if the purchaser agrees to convey the Affordable Unit on resale:

1. To an eligible purchaser located by the Town of Sandwich or the Monitoring Agent or the property owner or;
2. To the Town of Sandwich, for an amount equal to the Maximum Resale Price, which is determined by multiplying the most recent published area median income as determined by the United States Department of Housing and Urban Development ("HUD") (the "Base Income Number") by the Maximum Resale Price Multiplier. Maximum Resale Price Multiplier is calculated at the initial sale by dividing the Initial Sales Price by the Base Income Number.

4600. MULTI-FAMILY DWELLING. Multi-family dwellings shall be governed by this section. Special permits for multi-family dwellings shall be granted only after all of the following conditions have been completely met:

4610. Multi-family dwellings shall have the following **minimum frontages** on either a state highway or an accepted town way:

R-I, BL-1, and Shore Districts	150 ft.
R-2 and B-2 Districts	200 ft.
Ridge District	200 ft.

Multi-family dwellings shall not be permitted on those ways that have been designated by the Town as Scenic Roads.

4620. Multi-family dwellings shall be permitted only where it can be shown that the danger of pollution of ground or surface water is no greater than the danger to those same waters from single-family dwellings at the same location. The burden of this proof shall rest with the applicant. The pollutant loading from the on-site disposal system for a single family residence shall be considered to be twenty-one (21) pounds of nitrogen per year with an additional loading of nine (9) pounds of nitrogen per year for each 5000 square feet of lawn area.

4621. No special permit shall be issued until the Board of Appeals has been supplied with a complete set of **design plans for all on-site disposal facilities**. These plans shall include all percolation test results, properly witnessed by the health agent, test pit logs, design calculations, and a written certification from the Board of Health that the plans comply with all of the requirements of the state and local health codes in effect at the time of the filing of the application for special permit.

4630. The site shall be so designed that **all improvements** shall be in accordance with the standards set forth in the Subdivision Rules and Regulations of the Sandwich Planning Board and no special permit shall be issued until the Planning Board certifies to the Board of Appeals that the plans as submitted do so comply. The minimum design standards shall be those that apply to a minor street. The site design shall be such that visibility of parking areas from public ways or abutting properties is minimized; lighting of parking areas avoid casting glare onto adjoining properties; major topographic changes or removal of existing trees are avoided and effective use is made of topography, landscaping and building placement to maintain the character of the neighborhood and existing water views from public ways or abutting properties.

4640. Multi-family dwellings shall have an **applicable land area** per dwelling unit equal to at least 1.20 times the lot area required at the location for a single family dwelling. In calculating the total number of dwelling units, the definition of applicable land area contained in Section 4441 of these by-laws shall apply and no upward rounding of fractional parts of dwelling units will be allowed.

Front and rear yards and each side yard requirements shall be determined by multiplying the total number of units allowable on the lot by ten (10) feet. The minimum requirements shall be 100 feet and the maximum shall be 250 feet for multi-family dwellings containing more than 10 units. The Board of Appeals may reduce front, rear and side yard requirements if the topography of the parcel is such that placement of the structure or structures on the parcel, as required by these by-laws, would create a hardship for the owner. This reduction may be to the extent that the Board of Appeals determines necessary, provided that, by so doing, the required setback is not reduced below the minimum of 100 feet. These yard areas shall be retained in a natural undisturbed condition for the purpose of screening, except that the front yard may be penetrated by the necessary means of access and egress. Additional plantings shall be made to bring the screening density up to the required amount. The type and location of this screening shall be approved by the Planning Board.

4650. If the number of multi-family dwelling units allowed on a lot exceeds 10, there shall be two separate points of access and egress supplied. The location of these shall comply with the dimensional requirements for separation and visibility of **Section 3140** of these by-laws. These access roads shall be interconnected on the lot so as not to form separate dead ends.

4660. The applicant shall notify the agencies listed below that an application for a special permit along with an accompanying plan is being filed with the Board of Appeals and is available for review. Copies of receipts for those notifications shall be presented to the Board of Appeals as part of the application for special permit.

- a) Fire Chief
- b) Chief of Police
- c) Superintendent of Public Works
- d) Water District Superintendent
- e) Conservation Commission
- f) Electric Company
- g) Gas Company
- h) Telephone Company
- i) Cable Company

4670. The Board of Appeals shall require as a condition of the special permit that the applicant shall covenant with the Planning Board for the completion of all roadways and parking areas. These covenants and their ultimate release shall be in accordance with the rules and regulations of the Planning Board as contained in its Subdivision Control Regulations.

4700. CONVERSION OF SEASONAL OR INTERMITTENT-USE STRUCTURES

4710. Cottage Colonies. Any **existing cottage colony** may not be converted to single-family dwelling use under separate ownership unless the lots upon which each building is located comply with the minimum requirements for a cluster subdivision and are created as a cluster subdivision under **Section 4400**. However, a non-conforming cottage colony may be converted to a residential or mixed-use condominium, cooperative or time sharing condominium that is more intensive or frequent than seasonal or intermittent use upon issuance of a Special Permit from the Planning Board and compliance with **Section 4740**.

4720. Motels And Motor Courts. Any **existing motel or motor court** may not be converted to single-family use under condominium, cooperative, time sharing condominium or any other single-family use more intensive or frequent than the intermittent or seasonal use, unless the lot meets the minimum requirements and is in a district that permits multi-family dwellings as set forth in **Section 4600**. This section shall apply whether or not the lot is situated in a district in which multi-family dwellings are a prohibited use.

4730. Lodging Houses. Any **existing lodging house** may not be converted to condominium, cooperative, or time sharing condominium unless the lot area per dwelling unit is at least equal to the lot area required at that location for a single-family dwelling. The maximum number of converted dwellings shall be equal to the "Applicable Land Area," as defined in **Section 4441**, divided by 1.20 times the minimum lot area for a single-family dwelling in the district in which the lot is located.

4740. Procedures. The Planning Board shall act upon conversion of any existing cottage colony into a residential or mixed-use condominium, cooperative or time sharing condominium application as an application for special permit as set forth in **Section 1330** through **1360** and, where applicable, **Section 2400**. The **conversion of any existing cottage colony** into a residential or mixed-use condominium, cooperative or time sharing condominium shall comply with the following additional requirements:

1. The establishment of a condominium association or homeowner's association with documents and covenants reviewed and approved by the Planning Board as part of the Special Permit; the Planning Board may require that said documents and covenants be reviewed by its legal counsel at the applicant's expense.
2. A full operations and management plan for the property reviewed and approved by the Planning Board as part of the Special Permit; the Planning Board may require that said plan be reviewed by its consulting engineer or other appropriate consultant(s) at the applicant's expense.
3. The review and approval from the Sandwich Board of Health to ensure compliance with all on-site wastewater treatment requirements prior to Special Permit approval.

4. Review and approval from the Sandwich Engineering Department for any new or enhanced driveways or curb cuts, as well as on-site parking mitigation prior to Special Permit approval.
5. Review and approval by the Sandwich Historic Committee (if applicable) for compliance with Old King's Highway Historic District requirements prior to Special Permit approval.
6. Completion of a full inspection and building code compliance checklist to be conducted by the Town Building Inspector prior to Special Permit approval and issuance of final occupancy certificates.
7. Review and approval by the Planning Board of a site plan prepared by a registered landscape architect for any clearing of pre-existing on site trees in order to protect the vegetative integrity of the lot.

4800. SWIMMING POOLS.

4810. Swimming pools, whether public or private as defined in the Massachusetts State Building Code, shall comply with the applicable provisions of said State Building Code as may be in effect at the time of their construction. (Amended 1/14/08).

4900. DEVELOPMENT SCHEDULING

4910. Purpose. The purpose of **Section 4900 Development Scheduling** is to insure that a harmonious pattern and rate of development occurs in Sandwich to protect the welfare of current and future Sandwich residents. The consequences of the historical pattern and rate of development in Sandwich are described in the Master Plan Update of 1987. The rate of development in Sandwich shall be determined by, and should not exceed, the ability of the Town to provide adequate schools, roads, police, fire protection, and other services necessary to safeguard the health, welfare and safety of current and future residents. In addition, this development rate is intended to further the legitimate Commonwealth and local interests in the provision of a fair share of housing that is affordable to persons of low or moderate income.

4915. Definitions.

Applicant - Individuals, partnerships, corporations, trusts and other legal entities in which the applicant of record holds a legal or beneficial ownership of greater than one (1) percent.

Calendar Year - The period beginning January 1 and ending December 31.

4920. Applicability. **Section 4900** applies to the issuance of building permits for all new residential dwelling units, including those proposed for single or common lots for single-and two-family residential use as outlined in MGL Chapter 40A, Section 6. Two-family and multi-family dwellings shall be considered to have one building permit per dwelling unit for the purpose of this Section.

4930. Activation. This by-law will be activated upon the vote of Town Meeting. During the first calendar year it is in effect, the total number of building permits for residential units issued between January 1 of that year and the vote of Town Meeting shall count toward the 170 permit total described in Section 4940.

4940. Rate Of Residential Development. The Building Inspector shall issue permits for construction of new residential dwelling units only if permit issuance will not result in authorizing construction of a total of more than **170 dwelling units in a single calendar year**. This rate is intended to insure that the Town, with prudent reliance on local and other financial sources, and in compliance with the revenue generating limitations of Proposition 2 1/2, can and will provide infrastructure and operate in a manner that provides an adequate and responsible level of town services.

4950. Building Permit Authorization.

- a) No applicant may have more than one (1) request for a building permit pending before the Building Inspector in any given month.
- b) No more than six (6) building permits shall be issued to any one applicant within a single calendar.
- c) Applications for building permits shall be dated and time-stamped upon receipt by the Building Inspector. Building permits shall be issued on a first-in-time basis in twelve (12) even monthly amounts, with any partial or un-issued

permits to be carried forward for issuance in the subsequent month until the 170 permits have been issued. No un-issued building permits shall be carried forward from one calendar year to the next.

4955. Exceptions From Section 4950.

- a) Any units of housing proposed to be built under any program or statute intended to assist the construction of low or moderate income housing, as defined in the applicable statute or regulation, shall be exempt from the provisions of **Section 4950**, including affordable units created under **Sections 4130 and 4450** of the Sandwich Protective Zoning By-Law
- b) Units proposed for lots under an existing Development Schedule Covenant with the Planning Board shall not be subject to **Section 4950**.
- c) All exempt units, as described in **4955** (b) shall be counted toward the 170 permit total described in Section 4940.

4960. Issuance Of Building Permits. The Building Inspector shall issue building permits for construction of residential dwelling units only if permit issuance complies with the requirements of **Section 4900**.

ARTICLE V

WATER PROTECTION DISTRICTS (Amended ATM 07)

5000. Purpose. The purpose of these regulations is, in the interest of public health, safety and general welfare, to preserve the quality and quantity of the town's groundwater resources in order to insure a safe and healthy public water supply.

5010. Creation. Water Resource Overlay Districts are hereby created covering the areas described on the *Map entitled "Title 5 Setback Areas, Sandwich, Data Sources, MA DEP Approved Zone II: MA DEP DWP, Interim Wellhead Protection Areas (IWPA): MA DEP, Surface Water Supply Protection Areas (Zone A): MA DEP, Public Water Supplies (PWS): MA DEP DWP,"* dated July 20, 2006 as produced by the Mass GIS for the Massachusetts Department of Environmental Protection as amended. Said map is on file with the Planning Board and the Board of Health and is hereby made a part of this By-Law. These Water Resource Districts shall be considered to be superimposed over any other districts established in this By-Law. Where applicable, the requirements of this overlay district shall be construed to supersede any less stringent requirements of the underlying districts. (Amended STM 4/1/96, ATM 99 and ATM 07)

5020. DEFINITIONS. (Amended ATM 92) For the purpose of this bylaw, the following will define terms used within:

CULTIVATED LAWNS – shall mean a vegetation cover of sod forming grass species, which is regularly fertilized, irrigated, and maintained at a height of four inches (4) or less, on an appropriate loam base.

DISPOSAL – shall mean the deposit, injection, dumping, spilling, leaking, incineration or placing of any material into or on any land or water so that such material or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground water.

GROUND WATER – shall mean all the water found beneath the surface of the ground.

HAZARDOUS MATERIALS – shall mean any product or waste or combination of substances which, because of quantity, concentration, or physical or chemical, or infectious, or radioactive characteristics may reasonably pose, in the determination of the enforcing authority, a substantial present or potential hazard to human health, safety or welfare, or the environment when improperly treated, stored, transported, used or disposed of, or otherwise managed; any substance which may create a special hazard in the event of spill, leak, fire, or exposure; and all substances deemed to be hazardous waste as defined in MGL Chapter 21C Section 2 and the Hazardous Waste Regulations promulgated thereunder by Massachusetts Department of Environment Protection (DEP) at 310C CMR 30.010 in amounts in excess of that normally used in household maintenance; or other materials which are listed as toxic, hazardous or a priority pollutant by the United States Environment Protection Agency.

HISTORICAL HIGH GROUND WATER LEVEL – shall mean the highest ground water elevation that is likely to occur at a given location, based on calculations according to the High Ground water methodology specified in the U.S.G.S. Water Resource Investigations 83-4112 by Frimpter et.al. and any subsequent revisions.

IMPERVIOUS SURFACE – shall mean any material on the ground that does not allow surface water to penetrate into the soil.

LOAM – shall mean fertile, friable, natural topsoil of the locality, without admixture of subsoil, refuse or other foreign materials, and as further defined by the Barnstable County Extension Service.

PROCESS WASTEWATER – shall mean wastewaters disposed of on-site other than sanitary wastewater.

RECHARGE AREA – shall mean the area encompassing land and water surface through which precipitation enters the groundwater body, and from which groundwater flows naturally or is drawn by pumping into a water well.

SURFACE WATER LEVEL – shall be determined as provided for under Section 3610 of this Zoning Bylaw.

5030. USE REGULATIONS. (Amended ATM 92, ATM 99 and 07 and May 2009)

PROHIBITED USES. Within the Water Resource District, the following uses are prohibited:

- A. Sanitary landfills and open dumps;
- B. Landfilling or land disposal of septage or sewage sludge;
- C. Automobile graveyards or junkyards;
- D. Petroleum Bulk Stations and Terminals, including, but not limited to, those listed under Standard Industrial Classification (SIC) 5171 (Not including liquefied petroleum gas) and SIC 5983.
- E. Dry cleaning establishments;
- F. Metal plating operations/businesses unless with a 100% recycle process subject to the issuance of a Certificate of Water Quality Compliance by the Board of Health;
- G. Boat and motor vehicle service and repair may be allowed upon the issuance of a Certificate of Water Quality Compliance by the Board of Health (ATM May 2009).
- H. Car washes – unless with 100% recycle process requiring the issuance of a Certificate of Water Quality Compliance by the Board of Health and the approval by the State Department of Environmental Protection;
- I. Any activity or occupations that generate, treat, store or dispose of hazardous waste, which is subject to MGL Chapter 21C and 310 CMR 30.00, including without limitation, solid waste, hazardous waste, leachable waste, chemical waste, radioactive waste, and waste oil, except that waste oil retention facilities required by MGL Chapter 21, Section 41a and meeting the standards set forth in 310 CMR 22.22(2) (a) 4. Storage of household quantities may be allowed upon the issuance of a Certificate of Water Quality Compliance by the Board of Health;
- J. Industrial or commercial uses which dispose of process liquids on site;
- K. Storage of sodium chloride, calcium chloride, chemically treated abrasives or other chemicals used for the removal of snow and ice on roads, or the stockpiling and disposal of snow and ice containing sodium chloride, calcium chloride, chemically treated abrasives or other chemicals used for removal from highways and streets located outside the Water Resource District;
- L. Storage of pesticides, as defined in MGL Chapter 132B, Section 2, unless such storage is within a building or structure with an impermeable cover and liner that, pursuant to the issuance of a Certificate of Water Quality Compliance, the Board of Health has determined is designed so as to prevent an accidental release onto or below the land surface;
- M. Storage of commercial fertilizers and soil conditioners, as defined in MGL Chapter 128, Section 64, except in a structure with an impermeable cover and liner which, pursuant to the issuance of a Certificate of Water Quality Compliance, the Board of Health has determined is designed so as to prevent an accidental release onto or below the land surface;
- N. Any wastewater treatment plants except those that discharge outside the Water Resource District. A hydrogeologic evaluation shall be required if wastewater flows exceed 2,000 g.p.d.;
- O. Animal feedlots; (not applicable to parcels of land over five acres in size);
- P. Stockpiling of animal manures, except in a structure with an impermeable cover and liner and subject to a Certificate of Water Quality Compliance issued by the Board of Health;
- Q. Storage of septage or sewage sludge except in a structure with an impermeable cover and liner in compliance with MGL 310 CMR 32.30 and 310 CMR 32.31 and subject to a Certificate of Water Quality Compliance by the Board of Health if such proposal is compliant with 310 CMR 32.30 and 310 CMR 32.3 so as to prevent an accidental release into or on land surface;
- R. Any other use, which involves as a principal activity the manufacture, transportation, or on site disposal of toxic or hazardous materials;
- S. Land uses that result in rendering impervious any lot or parcel by more than 15% or 2,500 square feet, whichever is greater, unless a system for artificial recharge of precipitation is provided that the Board of Health has determined will not result in the degradation of groundwater quality.

5040. PERFORMANCE STANDARDS FOR ALLOWED USES. (Amended ATM 92 and ATM 07,) To preserve the natural land surface providing high quality recharge to the groundwater, to control sewage and septage flow and fertilizer application to amounts which will be diluted adequately by natural recharge, to prevent the formation of plumes of contamination in the groundwater system, and to prevent the discharge of leakage of toxic or hazardous substances into the groundwater, all allowed uses shall meet the following performance standards:

- A. The concentration of nitrate resulting from wastewater disposal and from fertilizer application, when diluted by rainwater recharge on the lot shall not exceed five (5) parts per million (p.p.m.)
 - 1. Existing buildings are exempt and must adhere to a standard of seven (7) parts per million (p.p.m.).

- B. For all uses combined, wastewater flow disposed on site shall not exceed 20,000 gallons per day. All cultivated lawns shall have a loam base of six inches (6").
- C. All toxic or hazardous materials shall be stored in product tight containers protected from corrosion, accidental damage or vandalism and shall be used and handled in such a way as to prevent spillage into the ground or surface waters. Spill containment will be provided for all storage. A product inventory and manifest system shall be maintained and reconciled with purchase, use, sales and disposal records at sufficient intervals to detect product loss. The storage of toxic and hazardous materials shall be subject to compliance with 310 CMR 22.21(2)(b)(5) and a Certificate of Water Quality Compliance issued by the Board of Health.
- D. No toxic or hazardous materials shall be present in wastes disposed on site. Wastes composed in part or entirely of toxic or hazardous materials shall be retained in product tight containers for removal and disposal by a licensed scavenger service or as directed by the Board of Health.
- E. With the exception of five (5) parts per million (p.p.m.) nitrate limit as stated in Section 5040 (a), contaminant levels in groundwater resulting from disposal of process wastes from operations other than personal hygiene and food for residents, patrons and employees, or from wastewater treatment and disposal systems greater than 10,000 gallons per day capacity shall not exceed those levels specified in Massachusetts Department of Environmental Protection Drinking Water Regulation 310 CMR 22.00 as amended, after allowing for dilution by natural recharge on the premises.
- F. All runoff from impervious surfaces shall be recharged on the site by diversion to areas covered with vegetation for surface infiltration to the extent possible. Dry wells shall be used only where other methods are infeasible, and shall be preceded by oil, grease and sediment traps to facilitate removal of contaminated solids. In the vicinity of chemical or fuel delivery points, provision shall be made for spill control.
- G. Except for excavations for the construction of building foundations, for the installation of utility works or for the laying out of roads, the removal of soil, loam, sand, gravel or any other mineral substance will be limited to a depth of ten (10) feet above the historical high ground and surface water level. The amount of land area exposed at any one time shall be limited to five (5) acre area being reclaimed to a natural vegetative state prior to issuance of the special permit for the use of the next five (5) acres. Upon the completion of operations, the remainder of the parcel of land shall be reclaimed to a natural vegetative state within one (1) year.
- H. The application of fertilizers for non-domestic or non-agricultural activities shall be limited to areas having at least six inches (6") of loam or naturally occurring top soil and made strictly in accordance with a management and site plan, delineating at a minimum the manner in which the application is to be performed in order to minimize adverse impacts on surface and groundwater due to nutrient transport and deposition and sedimentation.
- I. Where the premises are partially outside a Water Resource District, potential pollution sources such as on-site waste disposal systems shall, to the degree feasible, be located outside the District.

5052. CERTIFICATE OF WATER QUALITY COMPLIANCE. (Amended ATM 07)

A certificate of Water Quality Compliance shall be obtained from the Board of Health by the owner or applicant for uses that involve, the storage and or use of hazardous materials, the storage of pesticides and fertilizers, car washes, metal plating operations and the storage of septic or sewage sludge. No Building Permit or Certificate of Use and Occupancy, shall be issued by the Building Inspector, unless a Certificate of Water Quality Compliance, if required, has been obtained.

5053. REQUIREMENTS. A certificate of Water Quality Compliance shall be granted only as follows: For new construction or additions of new activities not involving structures, or for changes in occupancy or operation on previously developed premises, only if in full compliance with all requirements of Section 5040 Performance Standards.

5100. SURFACE WATER PROTECTION DISTRICT.

5110. SPECIAL PERMIT REQUIREMENTS IN SURFACE WATER PROTECTION DISTRICT. The Zoning Board of Appeals may withhold approval of a special permit for construction of any new principal structure or portion thereof intended for multi-family or commercial use, requiring a special permit as defined by the Zoning By-Law, whose septic disposal systems or any portion thereof lie within three hundred (300) feet of a surface water pond (see Section 5120) if, after weighing all the pertinent facts and evidence, the Board of Appeals finds that:

- a) The existing condition of the receiving waters is at or above critical eutrophic levels; or
- b) The nutrient contribution from the proposed development, when added to the existing and potential nutrient level of developments within the specific recharge area, will generate, on a pounds per acre basis, nutrient levels that exceed the receiving waters' critical eutrophic level.

However, the Board of Appeals shall not withhold approval of an application for a special permit if the applicant provides measures for reduction of the nutrient loading rate, on a pounds per acre basis, to a rate below that which would produce critical eutrophic levels in the water body. It shall be the responsibility of the applicant to demonstrate to the Board of Appeals that the proposed mitigating measures will work as designed, and the Board of Appeals may require the applicant to demonstrate on an annual basis that said mitigating measures are operating satisfactorily.

5120. SURFACE WATER BODIES. Surface water ponds, as shown on the Zoning Map, shall be considered superimposed over any other districts established by this by-law.

5130. ANALYSIS OF DEVELOPMENT IMPACT. The applicant under Section 5110 shall provide an analysis of development impact, which, at a minimum, includes the following:

- a) The existing condition of water body or water supply, including physical characteristics and water chemistry;
- b) The expected change in the condition of the water body or water supply as a result of the proposed development;
- c) The comparison, on a per acre basis, of the total nutrient loading from the proposed development with:
 1. The existing and potential loading from all other developments and acreage within the recharge area of the water supply or water body; and
 2. The loading rate which would be expected to produce critical eutrophic levels in the water body.
- d) In determining the impact of nutrient loading from a development, the following standards and definitions shall be used (unless the applicant demonstrates to the Appeals Board that, given the nature of the proposed project and/or receiving waters, other standards are appropriate):
 1. Loading per person: .25 lbs. phosphorus per person per year for sewage disposal systems within three hundred (300) feet of the shoreline;
 2. Loading from road runoff: .25 lbs. phosphorous per curb mile per day;
 3. Critical eutrophic levels - fresh water concentration: total phosphorous = .02 mg/liter.

5140. EXEMPTIONS. The Zoning Board of Appeals may accept an application from the requirements of Section 5100 provided that the applicant can demonstrate that:

- a) Nutrients from the development will not, in fact, be recharged to the designated water body; or
- b) The development will not result in any increase in loading the relevant nutrient.

5150. RELATION TO OTHER REQUIREMENTS OF THE ZONING BY-LAW. Approval of a special permit as noted in Section 5110 shall not substitute for compliance with any other requirement of the Zoning Act or the Sandwich Zoning By- Law.

ARTICLE VI

DELETED – (ATM 2013)

ARTICLE VI-A

6000. SANDWICH DEVELOPMENT AGREEMENT

6001. PURPOSE. WHEREAS: The Town of Sandwich 2009 Local Comprehensive Plan has been certified by the Cape Cod Commission as consistent with the Regional Policy Plan; this by-law is adopted pursuant to the authority of the Cape Cod Commission Act, Chapter 716 of the Acts of 1989, as amended, and Chapter D, Development Agreement Regulations, Code of Cape Cod Commission Regulations of General Application, for the purpose of authorizing the Town to enter into a Development Agreement with an owner of land for the mutual benefit of the parties consistent with the purposes of said Act and Regulations.

6002. AUTHORITY. Notwithstanding provisions of G. L. c. 40A or other law to the contrary, the Town, acting through the Board of Selectmen may enter into a Development Agreement with an owner of land within the Town as provided herein and consistent with the certified local comprehensive plan for the Town.

6010. DEFINITIONS.

ACT- The Cape Cod Commission Act, Chapter 716 of the Acts of 1989, including, where appropriate, regulations adopted by the Cape Cod Commission for the purpose of implementing Development Agreements and other actions authorized by the Act.

APPLICANT- As used in this section, a person or persons with 100 percent ownership and control of the land within a proposed Development Site, as well as meeting the requirements for Qualified Applicant status within the meaning of the Act and Regulations adopted thereunder.

APPLICATION- The form generated by the Town for initiation of the development agreement negotiation and legislation process and the process by which an Applicant initiates consideration of a proposed Development Agreement.

CAPITAL FACILITY- Any constructed element or service necessary or appropriate to support a Development, including but not limited to roads, water, sewers, waste treatment or disposal, affordable housing, schools, police and fire protection facilities.

CAPITAL FACILITIES, PUBLIC- Those Capital Facilities which are open or available to the general public.

CAPITAL FACILITIES, PRIVATE- Those Capital Facilities which are not open to the general public and are open or available only to the Applicant and successors in interest.

CHIEF REGULATORY OFFICER- The official appointed by the Barnstable County Commissioners, upon the recommendation of the Commission, as provided in Section 8(h) of the Act, who is responsible for supervising the development of the regional impact review process and for review of proposed Development Agreements as provided in §8.2 of the Cape Cod Commission's Model Development Agreement By-law.

CONSULTANT FEE- Such fees as may be required from an Applicant by the Town for peer or technical review in the course of the negotiation and review of a proposed Development Agreement as authorized in the manner provided by G. L. c. 44, §53G.

COUNTY- The County of Barnstable, Massachusetts.

DEVELOPMENT- Any of the following activities undertaken by any person: any building, construction, renovation, mining, extraction, dredging, filling, excavation, or drilling activity or operation; any material change in the use or appearance of any structure or in the land itself; the division of land into parcels; any change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or a change to a commercial or industrial use from a less intensive use; any activity which alters a shore, beach, seacoast, river, stream, lake, pond, canal, marsh, dune area, woodland, wetland, endangered species habitat, aquifer, or other resource area, including coastal construction or other activity in Barnstable County within the jurisdictional limits of Barnstable County; demolition of a

structure; the clearing of land as an adjunct of construction; or the deposit of refuse, solid or liquid waste or fill on a parcel of land or in any water area.

DEVELOPMENT AGREEMENT- A contract among and between an Applicant and the Town and, at the election of the Applicant, with the Cape Cod Commission, the principal purpose and effect of which is to establish the Development Rights that will apply to the Site of the Development Agreement during the term of said Agreement and to establish the conditions to which the Development will be subject.

Pursuant to a Development Agreement, an Applicant may agree to contribute one or more of the following: Public and/or Private Capital Facilities to serve the proposed Development, the Town and/or Region; Affordable Housing either on- or off-site; reservation of land for open space, community facilities, historic or natural preservation or recreational use and/or the contribution of impact fees or other funds to create or support any of such purposes and facilities. The Development Agreement shall establish the permitted uses, densities, scale of buildings, site design and traffic within or external to the Development Site, the duration of the Agreement, impact fees and any other terms or conditions mutually agreed upon between the Applicant, the Town and/or the Cape Cod Commission, and shall have the effect of Vesting the Development Rights relative to the Site for the duration of the Agreement, as further defined in this by-law and the Agreement.

DEVELOPMENT OF REGIONAL IMPACT (DRI)- As defined in the Act, a Development which, because of its magnitude or the magnitude of its impact on the natural or built environment, is likely to present regulatory or other development issues significant to or affecting more than one municipality, and which conforms to the applicable criteria set out in Section 12 of the Act.

DEVELOPMENT PERMIT- Any permit, license, authority, order, approval, certificate, endorsement, or permission required from the Town prior to the commencement or completion of any Development, but not including any household solid waste permit.

DEVELOPMENT RIGHTS- The restrictions and other conditions on the nature or number of residential or other units of development which are in effect at the time of submission of a completed Application as established by the Town's land use laws and regulations or, where applicable, by the Act and Regulations thereunder.

FEES- The Board of Selectmen may adopt regulations setting the fee for application for and modification of a development agreement and may establish a consultant fee procedure consistent with the provisions of G. L. c. 44, §53G.

HOUSING, AFFORDABLE- Any residential housing unit which meets affordability standards promulgated by the Executive Office of Communities and Development of the Commonwealth of Massachusetts and which prohibits discrimination because of the race, color, religious creed, national origin, sex, ancestry, sexual orientation or handicap of any person.

IMPACT FEE- Payment(s) to the Town designed to offset in whole or in part the effects upon the Town or Region of a proposed Development, which may include, but not be limited to payments for creation or enhancement of Public Capital Facilities, such as streets, sewers and sewer treatment facilities, water supply and distribution facilities, parks, improvements to natural resource areas, whether public or privately owned, schools, police and fire protection facilities, affordable housing and other Capital Facilities of or within the Town; such payments to be held and administered in the manner provided in §15 (b) and (c) of the Act.

INFRASTRUCTURE- Services and physical facilities accessory to or otherwise associated with development of a site, including but not limited to roads, water supply, sewers and electrical or other utilities.

LOCAL COMPREHENSIVE PLAN- The Sandwich LCP, as certified by the Cape Cod Commission as of the effective date of this by-law and as may be amended as of the date of submission to the Town of an Application for a Development Agreement.

MAIL- Unless otherwise indicated, certified mail, return receipt requested.

MODIFICATION, MAJOR- An amendment to an executed Development Agreement that alters or varies the use, intensity or mitigation stipulations of an executed Development Agreement.

MODIFICATION, MINOR- An amendment to an executed Development Agreement that is limited to a technical correction or does not alter or vary the use, intensity or mitigation stipulations of an executed Development Agreement, as determined by both the Commission and the Town.

NOTICE- Unless otherwise provided, written notice sent by certified mail to the Parties or other required entities.

PARTIES, PARTICIPATING- Following execution and delivery of a Development Agreement, the Town and Applicant, and, where applicable, the Cape Cod Commission.

PROFFER- An offer contained in an Application or made by the Applicant or another Party in the course of negotiation to commit to provide certain benefits to one or more of the Parties or to residents of the Town or Region, and which are intended to become a term or condition of the approved Development Agreement.

REGULATIONS- The Town, acting through the Planning Board as specified herein shall adopt, and may from time to time amend, regulations establishing procedures in furtherance of the objectives of this by-law.

REGION- That area, including but not limited to land within the County, which is either likely to be benefited or otherwise affected by a Development, either during its construction stage or post-construction.

SITE- The locus subject to a Development Agreement, whether consisting of a single parcel of land or multiple parcels.

TOWN- The Town of Sandwich, acting through its Board of Selectmen, which term shall include the designee of the Board of Selectmen.

TOWN MEETING- The legislative body of the Town.

TRANSFER OF DEVELOPMENT RIGHTS (TDR)- As authorized by an approved Development Agreement, the severance, or limitation, of the potential development rights of parcel, known as the "sending parcel," and the corresponding increase in Development Rights for another parcel, known as the "receiving parcel," as provided for in Regulations adopted by the Planning Board.

VESTING OF DEVELOPMENT RIGHTS- The "freezing" of applicable zoning or other local laws or regulations, and/or in the case of a Development Agreement to which the Cape Cod Commission is a party, Development Rights pursuant to §14(a) of the Act and §3 of Cape Cod Commission Regulations Chapter D "Development Agreement Regulations," with the effect that, notwithstanding any other law to the contrary, amendments to Town By-laws and regulations or, in the case of any Development Agreement to which the Cape Cod Commission is a party, to provisions of the Act and its Regulations otherwise applicable to the development of land, shall not apply to the Development Site during the term of the Development Agreement; subject to a requirement in the Development Agreement that the application and/or development authorized by a Development Agreement proceed reasonably and continuously.

6020. PARTICIPATING PARTIES. A Development Agreement may be executed by and between applicant and one or more of the following, parties:

1. The Town of Sandwich; or
2. The Cape Cod Commission and the Town of Sandwich.

6030. ELEMENTS OF DEVELOPMENT AGREEMENT

6031. Proffer(s) by Applicant. A Development Agreement may include, but is not limited to, commitments by the applicant to actions that contribute to one or more of the following interests, as they may be identified in the Application and further refined or modified in the course of negotiation of the Development Agreement, which, as identified in the Application may include, but not be limited to contributions for or improvements to:

1. The infrastructure of the Town and/or region;
2. Public or Private Capital Facilities;
3. Land dedication and/ or open space, historical or other preservation;
4. Affordable housing, either on- or off-site;
5. Employment opportunities;
6. Community facilities;
7. Recreational facilities, active or passive in nature;
8. Alternative or mass transportation facilities or contributions; and
9. Any other benefit intended to serve the proposed Development, Town, and/or Region, including without limitation site design standards for preservation or enhancement of aesthetic, natural, historic, cultural or other resources.

6032. Proffer(s) by Town. A Development Agreement may include commitments by the Town to provide specific protection(s) from future changes in applicable local by-laws and/or regulations and assistance in streamlining the local Development approval process. Streamlining may include, where not in conflict with existing local, state or federal law, holding joint board and permit hearings, coordination of permit applications and, where possible, accelerated review of permit approvals. The Parties may agree in writing to extensions of time within which development approvals under local laws may be acted upon, which, in the case of any Development Agreement to which the Cape Cod Commission is a party, may include deadlines for action on applicable state or regional laws and regulations.

6040. APPLICATION PROCEDURE

6041. Applicant Qualification. Application for approval of a Development Agreement may be made by a person having full ownership and control of the real property which is the subject of the Development Agreement, including the duly authorized agent.

6042. Application. Applicant shall complete a Development Agreement Application Form provided by the Town, which form shall require submission of the following information:

1. A certified list of abutters;
2. A legal description and survey plan of the Site, including names of all legal and equitable owners;
3. The proposed duration of the Development Agreement;
4. The uses currently permitted on the land by applicable zoning and other local controls, and all uses and structures proposed on the land, including, building densities, height, and any significant natural features;
5. A description of Public Capital Facilities that will service the Development, including sources of payment for such facilities, the date of construction of all new facilities, and a schedule to assure that public facilities adequate to serve the Development are available concurrent with the impacts of the Development;
6. A description of any reservation or dedication of land for public purposes, including public recreation, conservation, agricultural or historic purposes;
7. A description of all Town, State and regional permits and licenses approved or required to be approved for the development of the site;
8. A statement acknowledging that any omission or failure to address a particular permit, condition, term, or restriction in a Development Agreement as may issue for the proposed project shall not relieve applicant of the obligation to comply with the law governing said permitting requirements, conditions, terms or restrictions;
9. A Final Environmental Impact Report, bearing the certification of the Secretary of Environmental Affairs, if required under G. L. c. 30, §§61 through 62h;
10. Additional data and analysis necessary to assess the impact of the proposed Development;
11. Evidence of ownership and assets of all parties with legal or equitable interests in the site; and
12. A description of any zoning relief required pursuant to §7.703 Limitations.

6043. Cape Cod Commission a Party. An applicant shall complete a Development Agreement application form and comply with the specific application requirements set forth in Section 5 of Chapter D of the Code of Cape Cod Commission Regulations of General Application, as revised. The procedural requirements established in Section 5 of Chapter D of the Code of Cape Cod Commission Regulations of General Application, as revised, shall be followed, and no Development Agreement shall be valid unless and until the requirements of said Section 5 of Chapter D have been complied with in full.

6044. Cape Cod Commission Not a Party.

6044.1 Local DRI Determination. An applicant seeking to enter into a Development Agreement without the Cape Cod Commission as a party shall submit an Application containing a detailed description of the proposed Development to the Building Inspector for review and jurisdictional determination as to whether the proposed Development qualifies as a DRI.

1. If the Building Commissioner determines that the proposed Development is not a DRI, then the Building Commissioner shall within five business days forward said determination, together with reasons therefore and a copy of the Development Agreement application form, to the Clerk of the Cape Cod Commission, in which case the applicant may pursue a Development Agreement without the Cape Cod Commission as a party.
2. If the proposed Development is determined to be a DRI, then the Cape Cod Commission must be a party to the Development Agreement, in which case, the provisions of Section 5 of Chapter D of the Code of Cape Cod Commission Regulations of General Application, as revised, shall apply, which require, among other things, that the applicant shall file with the Cape Cod Commission a Notice of Intent to file a Development Agreement for a determination by the Cape Cod Commission Regulatory Committee as to whether the proposed development is suitable and qualifies for the Development Agreement Process.

6050. STANDARD OF REVIEW. The Planning Board shall review a proposed Development Agreement for consistency with the Cape Cod Commission Act, the Town's zoning and the Local Comprehensive Plan. A Development Agreement proposal that is inconsistent with the by-law shall require either a zoning amendment or shall be subject to obtaining the required zoning relief, by special permit or otherwise, as may be available under then current zoning as necessary to eliminate the conflict or inconsistency with zoning, unless, however, the Development Agreement containing such inconsistencies is approved by two-thirds vote of Town Meeting.

6060. NEGOTIATION. Negotiation of the terms of a Development Agreement shall commence with the filing of an Application with the Planning Board. The Planning Board may designate such other boards, departments or officers to participate in review of the Application as it shall deem necessary or appropriate in consideration of the nature of the proposed Development, the characteristics of the Site and any other relevant considerations. All negotiations shall take place in open meetings or public hearings that comply with the applicable Town or statutory requirements for the notice and conduct of meetings with or hearings by Town boards.

6070. HEARING. The Planning Board shall hold a public hearing after receipt of a fully completed Application. There shall be a minimum of two public hearing sessions for the purpose of reviewing the Development Agreement application, which hearing shall close within 90 days, unless extended by mutual agreement of the parties. Failure to close the public hearings within 90 days shall not result in a constructive grant of the proposed development.

6071. Notice. The Town shall provide at the expense of applicant notice of the public hearing to consider a Development Agreement by publication in a newspaper of general circulation once in each of two successive weeks, the first publication to be not less than 14 days before the day of the hearing, and by mailing notice not less than 14 days before to:

1. The Board of Selectmen, Town Manager, Town Clerk, Building Inspector, Planning Board, Zoning Board of Appeals, Conservation Commission, Board of Health, Old King's Highway Historic District Committee, Historic District Commission, Housing Authority, Sandwich Economic Initiative Corporation and any other Town agency, officer or individual that makes a written request for such notice;
2. The applicant;
3. Each abutter to the Site, based on a list of abutters provided by the applicant and certified by the Sandwich Tax Assessor, including owners of land directly opposite the Site on any public or private street or way and owners of land located within 300 feet of any boundary of the proposed Development; and
4. The Cape Cod Commission.

6080. DECISION: ISSUANCE; FILING; RECORDING AND SUMMARY

6081. Issuance. A Development Agreement shall be issued in a form suitable for recording in the Barnstable County Registry of Deeds.

6082. Filing and Recording. The Town shall file an executed Development Agreement with the Clerk of the Cape Cod Commission and with the Town Clerk, and shall, at the expense of the applicant, record the executed Development Agreement in the Barnstable County Registry of Deeds and publish notice of issuance of a Development Agreement in a newspaper of general circulation in the Town, which notice shall contain a brief summary of the contents of the Development Agreement and a statement that copies of the Development Agreement are available for public inspection at the office of the Town Clerk during normal business hours.

6083. Summary. In addition, the Town shall provide the Cape Cod Commission with a summary of the Development Agreement which the Cape Cod Commission shall publish in its official publication pursuant to Section 5(i) of the Cape Cod Commission Act.

6090. MODIFICATION AND RESCISSION OF DEVELOPMENT AGREEMENT

A Development Agreement may be amended or rescinded as provided below, subject to the same procedural requirements as required for application pursuant to §5 of the Development Agreement Regulations applicable where the Cape Cod Commission is a party, other than submission of a Notice of Intent pursuant to §5(a) of said Regulations and §6, applicable where the Cape Cod Commission is not a party, including requirements applicable to negotiation, hearing and approval of a Development Agreement as applicable to the original application.

6091. Procedure. At any time following execution and delivery of an approved Development Agreement, any Party to the Development Agreement, including the Town on its own initiative, acting through the Board of Selectmen, may petition for amendment or rescission of the Development Agreement. If not a Party, the Cape Cod Commission may petition to rescind the Development Agreement only in the event of failure of consideration.

Modification or rescission of an executed Development Agreement must be ratified by all parties to the original Development Agreement. Any Development Agreement may contain provisions further regulating the amendment and/or rescission of a Development Agreement.

1. A petition for modification or rescission shall be made in writing and shall state, in specific detail the Petitioner's reasons for amendment or rescission, and, except in the case of a Minor Modification, a Party applying for modification or rescission shall provide notice of said application, in writing and at its own expense, to every Party, and to the Cape Cod Commission if not a Party, including a copy of the application for modification or rescission.
 - a. Minor Modification- Amendments to an approved and executed Development Agreement that consist only of de minimis substantive changes or technical or typographical changes may be made by the Planning Board at an open meeting without the need for the full application, notice and hearing required for the original application, provided that any such Minor Modification is authorized by the Regulatory Committee of the Cape Cod Commission and by majority vote of the Board of Selectmen; otherwise, the procedure for Major Modification shall apply.
 - b. Major Modification or Rescission-
 - i. When the Commission is a party to the Development Agreement, any Party to a Development Agreement, any Participating Party, including the Commission, may petition to amend the Development Agreement, subject to the application, notice and hearing requirements for the original application; however, the Commission may petition for rescission only in the event of failure of consideration.
 - ii. When the Commission is not a party, the Town or any other Party to the Development Agreement may petition to amend or rescind the Development Agreement, subject to the application, notice and hearing requirements for the original application; provided that said petitioner shall provide notice in writing to the Commission and all Parties of its intent to seek amendment or rescission.

6100. DECISION

6101. Term

1. A Development Agreement shall commence and terminate as provided in said Agreement. Where the Cape Cod Commission is not a party, a Development Agreement shall not exceed 10 years;
2. Where the Cape Cod Commission is a Party, a Development Agreement may extend for such period of time as it may provide, as set forth in Section 7 of Chapter D of the Code of Cape Cod Commission Regulations of General Application, as revised; and
3. Notwithstanding the foregoing, conditions or other provisions of the Development Agreement pertaining to the preservation of open space and park areas, and agreement to pay for maintenance of utilities and other infrastructure may exceed such ten-year limitation.

6102. Interpretation.

1. A Development Agreement may not be interpreted or applied to prevent the Town or other governmental subdivision or agency from requiring applicant to comply with the laws, rules and regulations and policies enacted after the date of the Development Agreement, if the Town or governmental agency determines that the imposition of and compliance with the newly effective laws and regulations are essential to ensure the public health, safety or welfare of the residents of all or part of the jurisdiction; and
2. In any case of conflict between the provisions of this by-law and other by-laws or regulations of the Town, the more restrictive provisions shall apply.

6103. Limitations.

1. Nothing in this Article shall be construed to permit the Town to require an applicant to enter into a Development Agreement; and
2. Any provision within a Development Agreement that is inconsistent with the zoning bylaw shall require either a zoning amendment or shall be subject to the grant of such zoning relief as may be needed for compliance with the zoning bylaw.

6104. Enforcement. A Development Agreement is a binding contract which is enforceable in law or equity by a Massachusetts court of competent jurisdiction.

ARTICLE VII

THREE PONDS DISTRICT

7000. PURPOSE AND OBJECTIVE. The purpose and objective of the Three Ponds District (the "District") is to accomplish the following:

- Protect, to the greatest extent possible, surface and groundwater resources and their quality;
- Preserve rare and endangered species and habitat existing within fragile ecosystems;
- Preserve the scenic character of the District roads as well as the scenic views of the pond shores and woodlands;
- Foster carefully planned land uses such as small scale densely clustered residential development with recreational amenities of an appropriate scale;
- Preserve existing single family homes;
- Foster existing open space and recreation land uses including summer camps as this is a use that encompasses both recreation and education;
- Allow for additional recreational uses that are compatible with resource protection;
- Manage growth in a manner that will not adversely affect municipal infrastructure.

7010. Three Ponds District. The District encompasses approximately 692 acres of land area and approximately 313 acres of pond surface area. The boundaries of the District are shown on a plan entitled "Three Ponds District" prepared by the Cape Cod Commission; dated January 30, 2001 is hereby made a part of this by-law. This plan is on file in the Planning & Development Office. In addition, a natural resources inventory prepared by Horsley & Witten, Inc. and dated October 5, 2000 is on file in the Planning & Development Office.

7020. Definitions. In addition to the definitions contained in the Definition Section of the Sandwich Protective Zoning By-law, the following definitions shall apply to the provisions of this bylaw. In the event of a conflict, the definitions below, shall be applied to uses or structures located in the District. Any definition used in this section shall be strictly interpreted by all permit granting authorities.

Adult Retirement Development (ARD). A self-contained alternative residential community located on a parcel or contiguous parcels that total at least five (5) acres in area. An ARD shall be developed expressly for and specifically limited to use and residency by persons, and their dependents as defined under state and federal regulations, who have achieved a minimum age requirement for residency of at least fifty five (55) years of age. A resident or occupant of an ARD shall mean a person who has achieved a minimum age of at least 55 years. An ARD shall be established for the following purposes:

- a) to meet the housing needs of an older population;
- b) to provide an attractive and suitable residential environment that is amenable to the needs of an older population;
- c) to encourage creative and innovative site design to enhance the attractiveness and suitability of smaller homes, the preferred housing for the older population; and to preserve open space in perpetuity for the protection of natural resources and the character of the existing land.

An ARD shall be subject to all the provisions of Article VI, Sections 7700 through 7790 inclusive.

Adult Retirement Development Accessory Uses. Accessory facilities including but not limited to the provision of services to residents of the Adult Retirement Development, including daily meals, necessary personal services, medical monitoring and supervision. Such accessory facilities shall be of a reasonable size and in no case shall the general public use any facility accessory to an adult retirement development.

Accessory dwelling unit. See Section 4130 of these Zoning By-laws.

Accessory structures to a single-family dwelling. The following structures may be allowed as of right as accessory to a single-family dwelling. A garage for the storage or keeping overnight of not more than four motor vehicles. Only one of said vehicles may be a commercial vehicle and shall not exceed a gross vehicle weight of twelve thousand five hundred (12,500) pounds or measure more than seven feet, six inches (7'6") from the ground to the top of the roof, or measure more than twenty one feet (21') from the front bumper to the rear bumper. A shed such as a greenhouse, tool shed or playhouse may be allowed.

Accessory uses to single-family dwelling. Home occupation, bed and breakfast, stable, accessory dwelling unit.

Agricultural Use. The agricultural uses provided for under Massachusetts General Law, Chapter 40A, Section 3 shall be allowed in the District on any parcel or series of contiguous parcels containing at least five acres. Premises, including necessary structures and equipment, containing at least five acres, which are used for gain in the growing of

agricultural crops, or the raising of livestock including a stand for the sale of produce, 50% or more of which is raised on the premises upon which the farm stand is located. Structures which house or otherwise contain animals shall be set back a minimum of 100 feet from every lot line lot line and a minimum of 200 feet from every dwelling. Agriculture shall not mean the removal from the District of any natural resource such as minerals, rocks, air, or water.

Assisted Living Facility. An assisted living facility shall include: single and/or multi-family dwelling units and accessory facilities designed for independent living that provides continuous protective oversight and assistance with activities of daily living to frail elderly persons or other persons needing such assistance. Assistance with the activities of daily living may include, but is not limited to, bathing, dressing, eating getting on to and out of bed or chairs, walking, going outdoors, using toilet facilities, laundry, home management, meal preparation, shopping, supervision or medication and housework.

Assisted Living Accessory Facilities. Facilities allowed only in conjunction with a duly permitted Assisted Living Facility. Such accessory facilities may include food service, small-scale medical facility, recreational facility housing for staff. The total floor area of all combined accessory facilities shall not exceed 20% of the total square footage of the assisted living facility. Parking shall be the minimum parking area required by Section 3100 of this Zoning By-law. In no case shall the general public use any facility accessory to an adult assisted living facility.

Bed and Breakfast. An owner-occupied dwelling for the rooming and boarding of guests. Food or beverage shall only be served to those who let a room in such a dwelling. A Bed & Breakfast shall not be considered a Home Occupation.

Boathouse. A structure erected for the sole purpose of storing only personal property of the boathouse owner such as watercraft and related equipment such as personal flotation devices, oars and other items necessary to the use of personal watercraft. Storage of gasoline, motor oil, engine oil, and all hazardous materials shall be strictly prohibited. A boathouse shall not include permanent sanitary facilities, sleeping quarters, food service of any sort including vending machines, office space, recreational space or any other area or use other than watercraft storage. The minimum lot area required for any principal use to site an accessory boathouse shall be 60 acres and the 60 acres shall have been owned by the owner of the principal use at the time of the passage of this Zoning By-law.

Campground – Not for Profit. Premises operated by a not-for-profit organization that is tax exempt under the Internal Revenue Code used for travel trailers, campers, tenting or for temporary overnight facilities of any kind where a fee is charged.

Camping, Supervised – Not for Profit. Facilities operated by a not-for-profit organization that is tax exempt under the Internal Revenue Code on a primarily seasonal basis for continuing supervised recreational, health, educational, religious, and/or athletic programs, with persons enrolled primarily for periods of not less than one week, and with a group dining facility only if overnight accommodations are included. Such a camp may erect or maintain one boathouse per pond per camp facility ownership in effect at the time of the passage of this by-law. Such structures shall be permitted only in accordance with the provisions of Section 7550.

Campground – For Profit. Premises used for campers, tenting or for temporary overnight facilities of any kind where a fee is charged.

Camping, Supervised – For Profit. Facilities operated on a seasonal basis for continuing supervised recreational, health, educational, religious, and/or athletic programs, with persons enrolled for periods of not less than one week, and with a group dining if overnight accommodations are included.

Educational Use. Use of land and structures within the meaning of M.G.L. Chapter 40A, Section 3.

Golf Course. A recreational facility for the practice, instruction and playing of golf. Miniature golf courses and any golf course of more than nine (9) holes shall be prohibited. A nine (9) hole golf course shall be permitted only as an accessory use to a principal use such as a supervised campground or an adult retirement cluster subdivision, and only upon issuance of a special permit. The minimum lot area required for any principal use that desires to construct a nine (9) hole golf course shall be 300 acres owned by the principal use at the time of the passage of this Zoning By-law.

Home Occupation. A business or profession engaged in within a dwelling by a resident of thereof as a secondary use of the dwelling. Home occupations shall comprise no more than 30% of the floor area of the dwelling. All outdoor storage of equipment shall be prohibited. The provisions of Section 4110 of this Zoning By- law shall apply to all home occupations.

Lot Coverage. For the purposes of this Article, lot coverage shall mean any land surface area covered by an impervious surface. Impervious surfaces shall include, but not be limited to, any roof, concrete or other impervious material or surface, swimming pool, any impervious sport or recreation area such as basketball or tennis courts,

driveways constructed with asphalt or other types of impervious paving. The roof(s) of accessory structures shall be included in the maximum lot coverage calculation.

Municipal Use. A municipal use shall include any use of land, buildings, and structures by the Town of Sandwich that is compatible with the purpose of the District. No state or municipal entity shall locate a public well within the District without first demonstrating that the water withdrawals proposed by such public supply well will not be a detriment to the ponds, rare or endangered species or any other resource within the District.

Museum. Premises for the procurement care and display of inanimate objects of lasting historical or cultural interest and value.

Nursing home, convalescent home. An establishment providing housing and general care for the aged or the convalescent including any premises licensed as such by the Massachusetts Department of Public Health under Section 51 or 71 of Chapter 111, Massachusetts General Law.

Open Space Residential Development. A form of residential subdivision that encourages variation in development styles and minimizes the impacts of development while providing efficient arrangement of roads and utilities and preserves open space in perpetuity for the protection of natural resources and the character of the District. All parcels or contiguous parcels of land of 80 or more acres seeking subdivision approval shall be subdivided as an Open Space Residential Development through a special permit from the Planning Board.

Philanthropic Institution. An endowed or charitably supported, not-for-profit religious, educational or non-sectarian activity maintained for public or semi-public use.

Preservation Zone. An area of land depicted on the Three Ponds District Map that is not suitable for development due to the sensitive nature of the natural resources located there. No new development or extension of any existing use or structure shall occur within any Preservation Zone.

Religious Use. Use of land, buildings, and structures by a religious sect, denomination, or community service organization as defined under M.G.L. c.40A, Section 3.

Seasonal Facility. A facility that offers activities that do not occur and are not designed to occur on a year round basis.

Single Family Home. A free standing building located on a separate building lot that is used exclusively for residential use by not more than one family.

Spa. A resort that provides services that enhances the health and wellbeing of its guests. Typical spa facilities provide: instruction in exercise, nutrition, general health and fitness; opportunities to access a wide variety of exercise equipment, body work therapists, swimming facilities, outdoor hiking trails and small scale outdoor recreation such as tennis courts, croquet courts etc., The spa shall consist of a building or group of buildings, a portion thereof designed for serving food in a dining room and containing 15 or more sleeping rooms for overnight guests together with both the indoor and outdoor recreational facilities. All spa facilities shall be for the exclusive use of the overnight guests of the spa. A spa is not allowed on parcels less than 25 acres in area. Setback requirements of the district are doubled for spa lots. The spa lot must maintain a 50' undisturbed vegetated buffer around the lot perimeter.

Stables. Premises used for the shelter and feeding of horses.

Structure. See Definition section of this Zoning By-law.

Swimming Pool. See Definition section of this Zoning By-law.

Water Dependent Structures. Any structure that requires direct access to or location on Lawrence, Spectacle or Triangle ponds. Such a structure shall include, but not be limited to, any structure that provides access to the ponds for the purposes of fishing, swimming, diving, boating or other water based recreational activities. Any boardwalk or other walkway constructed for the purpose of gaining access to the ponds shall be limited to three (3) feet in width, or any greater width required by law. Water dependent uses and structures other than those proposed or used for recreation or education shall be prohibited.

Wireless Telecommunications Services. As provided in Section 3800 of this Zoning By-law.

7100. PERMITTED USES.

Agricultural Uses on Parcels of more than 5 acres

Accessory Structures: Garage, shed, boathouse, or swimming pool

Campground by a not-for-profit organization

Camping, supervised by a not-for-profit organization

Educational Use

Home Occupation

Municipal Use

Religious Use

Single Family Home

Wireless Telecommunications Services

CONDITIONAL USES. A special permit may be granted to allow the following accessory and principal uses, with appropriate conditions. Such a permit shall be granted unless it appears that nuisance, hazard, or congestion will be created by the proposed use or if for other reasons the proposed use would cause substantial harm to the neighborhood or derogate from the intent of this by-law so that the purposes and objectives of the District would not be satisfied.

Accessory Uses:

Accessory Dwelling Unit

Stables as an accessory to a principal use

Swimming Pool as an accessory to a principal use

Nine (9) Hole Golf Course as an accessory use to a principal use

Adult Retirement Development

Assisted Living Facility

Bed & Breakfast Campground – For Profit Camping, Supervised – For Profit

Nursing home, convalescent home

Museum

Open Space Residential Development

Philanthropic institutions

Spa

PROHIBITED USES. Any use not specifically allowed as of right or by special permit within this district is prohibited.

7110. Special Permit Granting Authority. For the purpose of Article VII, the Planning Board shall serve as the Special Permit Granting Authority (SPGA) unless otherwise indicated in Article VII.

7120. Special Permit Application Guidelines. The issuance of any special permit for any use or structure in the District shall be governed by the requirements of this Article and by the requirements and procedures set forth under Sections 1330 through 1370 of this Zoning By-law. In the event of a conflict between these provisions the stricter provisions shall be applied. The SPGA is authorized, upon receipt of a written request, to waive specific submission requirements of Sections 1330 through Sections 1370 if the SPGA deems a particular requirement to be duplicative or unnecessary.

7130.

- a. **Protections under M.G.L. c.40A, Sections.** All of the protections afforded under M.G.L. c. 40A, Section 6 shall apply to the land within the District.
- b. **Nonconforming Vacant Lots.** If a vacant lot, protected under either M.G.L. Chapter 40A, Section 6 as a separate lot or under Section 2550 of this by-law, is too small to conform to any particular requirement set forth under this Article, these structures shall be located at least 300 feet or the maximum reasonable distance from the shoreline elevation of any pond located in the District.

7140. Existing Single Family Homes. An existing single family home that, at the time of the adoption of this by-law, does not meet the requirements of Article VII shall be allowed to continue to exist. Any additions, alterations, or septic system upgrades shall conform to the provisions of this by-law. To the extent that this provision is inconsistent with any other portion of this Zoning By-law, this Article shall control. Notwithstanding the foregoing, a landowner shall be allowed to take the following actions:

- a. Bring a substandard or failing septic system into compliance with Title V, provided that said system shall be sited at least 300 feet or the maximum reasonable distance from the shoreline elevation of any pond located in the District;
- b. Add onto any existing residential structure, provided that the cumulative resulting increase in the floor area of the addition does not exceed 60% of the total floor area of the dwelling before the first such addition (such floor area calculation shall include only habitable areas of the existing structure as defined by the Massachusetts Building Code) provided that said addition shall be sited at least 300 feet or the maximum reasonable distance from the shoreline elevation of any pond located in the District; or
- c. Site an accessory structure provided that said structure shall be sited at least 300 feet or the maximum reasonable distance from the shoreline elevation of any pond located in the District.

7150. Change, Extension or Alteration. No change, extension or alteration of a pre-existing non-conforming use and no change extension or alteration of a pre-existing non-conforming structure shall be made except upon issuance of a special permit from the SPGA. Such special permit shall be granted only when the SPGA finds that the proposed

change, extension or alteration of a pre-existing non-conforming use or the change, extension or alteration of a pre-existing non-conforming structure is not substantially more detrimental to the neighborhood than the existing non-conforming use or non-conforming structure. The following conditions shall apply to any special permit granted under this section:

- a. Any change, extension or alteration may occur only upon those parcels of land upon which the pre-existing non-conforming use or structure is located.
- b. Soil absorption systems, structures, including stormwater structures and stormwater discharge, shall be located at least 300 feet or the maximum reasonable distance from the shoreline elevation of any pond located in the District.
- c. All new construction including any parking, driveways or roadways shall be substantially screened from abutters, District scenic roads, and the ponds located in the District.
- d. All new construction shall strive to preserve any scenic views from scenic roads or from the ponds located in the District.
- e. The SPGA may consider proposals to change, extend, alter or relocate a pre-existing non-conforming use or a pre-existing non-conforming structure that provide a clearly demonstrated benefit to the District, the District surface waters and other District's resources. The applicant shall factually demonstrate to the satisfaction of the SPGA using scientific methods that the proposed change, extension or alteration better protects the resources of the District than the existing structure or use does in its present location or configuration.

7200. DIMENSIONAL REQUIREMENTS. Lot size, lot width, setbacks, coverage and height regulations shall be as set forth below:

Minimum Lot Size	2 acres
Minimum Lot Frontage	200 feet
Minimum front yard setbacks	50 feet
Minimum side and rear yard setbacks	45 feet
Maximum lot coverage %	25 %
Maximum building height	35 feet

7500. POND SHORELINE BUFFER REQUIREMENTS

7510. Shoreline Location. The pond shoreline location for District's ponds shall be measured from the following elevations as shown on the map "Three Ponds District drawn by the Cape Cod Commission and dated January 30, 2001":

Pond	Elevation
Lawrence Pond	65
Spectacle Pond	67
Triangle Pond	66

7520. Prohibitions. The following are prohibited within 300 feet of a pond's shoreline:

- a. Septic Systems (Soil Absorption Systems) and leaching fields.
- b. Direct discharge of stormwater or stormwater runoff that travels through or upon the 300 feet pond buffer originating from roads, rooftops, developed land areas and any other uses and/or activities.
- c. Use of pesticides, herbicides and fertilizers, which contain nitrogen and phosphorous, in amounts detrimental to the surface water quality.
- d. No agricultural animals shall be housed, stored, grazed or herded within the 300 foot shore buffer for any pond located in the District. No agricultural animal waste shall be stored or otherwise located within the 300 foot shore buffer for any pond located in the District.
- e. All principal and accessory structures, including impervious paving, fencing, walls and water dependent structures except as provided in Section 7020 and 7150.

7530. Water Dependent Structures. Any new water dependent structure or change, extension or alteration to an existing water dependent structure that may be allowed under Section 7150 or under the definitions in Article VII shall be located no closer than 300 feet from the shoreline elevation of any pond located in the District. However, a water dependent structure may be allowed within 300 feet of the shoreline elevation for any pond located in the District by special permit, but only if the following criteria are met:

- a. Sections 1330 and 7520 subsections a. through d. of the Sandwich Protective Zoning By-law are adhered to;
- b. The proposed structure shall have a footprint that does not exceed 24' by 30';
- c. The applicant shall demonstrate the need for placing the structure within the 300 foot buffer; and
- d. The applicant shall demonstrate the benefit of placing the structure within the 300 foot buffer.

7600. SCENIC ROADS CORRIDOR. The following regulations shall apply to the following roadways and roadway segments within the District:

- a. Farmersville Road from the westerly intersection with Stowe Road to the easterly intersection of Stowe Road;
- b. Pinkham Road from Stowe Road to the northern boundary of the district;
- c. Great Hill Road from Farmersville Road to Popple Bottom Road; and
- d. Stowe Road in its entirety.

7610. New Structures. The following criteria shall be met to preserve the character and enhance safe travel on the scenic roadways:

- a. New structures shall not be located closer than 100 feet from the edge of pavement on any of the roadways or roadway segments described in Section 7600.
- b. With the exception of a curb cut for a driveway, a minimum 100 foot buffer of natural vegetation, including over story and understory vegetation, shall be maintained along the frontage of all lots fronting on the roadways and roadway segments described in Section 7610.
- c. Where a lot in existence at the time of the adoption of this Article is of a size that the 100 foot scenic road buffer and/or the 300 foot pond buffer as required in Section 7500 cannot be met and the lot is protected as buildable under state or local law, development may be allowed provided the following criteria apply:
 - 1. Dense plantings of evergreen vegetation combined with the construction of berms shall be installed to screen new construction from the scenic road. Plant varieties shall be indigenous to the area and may include rhododendron, cedar, white pine, American holly, inkberry, spruce, fir, and sheep laurel.
 - 2. New lawn area shall not be planted within the 100 foot scenic road corridor.
- d. New subdivisions shall be designed to incorporate the 100 foot scenic road corridor along subdivision roadways as part of the required open space.

7620. Shared or Common Driveways. The following guidelines shall apply to new Development and driveway construction on any of the roadways and roadway segments as described in Section 7600.

- a. The use of shared driveways is encouraged whenever two lots are being created by any division of land regulated by the Subdivision Control Law including Approval Not Required divisions of land.
- b. Where 3 to 5 lots are being created as described in Section 7620 subsection a. a special permit from the Planning Board may reduce the frontage required by Section 7200 to a minimum of 100 foot for any lot that is subject to a permanent deed restriction requiring a shared driveway. The deed restriction language shall be submitted with the application for the division of the land and must be of a form and content acceptable to the Planning Board and Town Counsel. The deed restriction shall be recorded with the plan that divides the parcel. This provision shall only apply to the frontage dimensional requirement; no other dimensional requirement shall be lessened through this provision. Common driveway(s) created by such a special permit shall not be used as frontage for any lot.
- c. Where shared driveways are not feasible, driveways and new subdivision roadways shall be designed to meander or wind to obscure views of new development from the scenic roadway.
- d. The use of board fencing stained to blend with the natural landscape or natural finish wooden fencing especially split rail fencing is encouraged when installing fencing along front lot lines.
- e. Landowners and land developers are strongly encouraged to use siding and roofing colors that blend with the natural landscape. Such colors include browns, greys, dark greens and naturally stained building materials.
- f. New structures shall be sited to prevent obstruction of existing views of the ponds located in the District from any scenic roadway located in the District.

7700. SPECIAL PERMIT CRITERIA FOR USES ACCESSORY TO AN ALLOWED PRINCIPLE USE.

1. **Nine (9) Hole Golf Course:** The SPGA may grant a special permit for a nine (9) hole golf course in the District, but only after the applicant has demonstrated the following:
 - a. The design and layout of the golf course minimizes to the greatest extent possible impacts to the environment, water bodies, adjacent properties, and the natural habitats of plants and animals. These impacts shall be minimized or eliminated by retaining original land contours; by the installation of monitoring wells to ensure continued protection of the ground water and surface water quality; by conducting a thorough natural resources inventory; and by using encapsulated greens and/or other protective technologies that eliminate any threat to the resources of the District.
 - b. The design and layout of any nine (9) hole golf course shall avoid disturbing, impacting or altering key features of the landscape; natural landforms; plant and/or animal habitat; unfragmented forest areas; cultural and historical features; existing scenic views of the ponds; surface water bodies; surface and groundwater quality.
 - c. The plan shall show large buffer zones around the edges of habitat areas.
 - d. The proposal complies with all applicable sections of the Sandwich Protective Zoning By-law.
 - e. The proposal includes a thorough description of best management practices for maintenance of the course that includes minimizing or eliminating the use of pesticides, herbicides and fertilizers; installing irrigation systems that reduce water demand and reuses water; and by using drought and disease resistant plants and grasses. Best management practices shall be included as a condition of approval of any special permit.

- f. The land upon which the golf course is to be constructed may include up to 50 acres of adjacent land not owned by the owner of the principal use to which the golf course is accessory. The owner of the principal use shall demonstrate control over any such adjacent property to the satisfaction of the SPGA.

2. **Stables.** The SPGA may grant a special permit for an accessory stable only after the applicant demonstrates the following:

- a. Stables housing or otherwise containing animals shall be set back a minimum of 100 feet from every lot line and a minimum of 200 feet from every dwelling or other principal structure.
- b. No animals shall be housed, grazed, or herded within the 300 foot shore buffer for any pond located in the District. No animal waste shall be stored or otherwise located within the 300 foot shore buffer for any pond located in the District.

3. **Swimming Pools.** The SPGA may grant a special permit for an accessory swimming pool after the applicant demonstrates the following:

- a. That the installation of the swimming pool does not alter the natural landforms or topography in any way that is detrimental to the surface water quality of the ponds in the District or to any adjacent habitat areas.
- b. That the erosion control plan submitted for approval by the Town Engineer prevents all erosion during site preparation, construction, installation, use, and maintenance of the swimming pool.
- c. That the process of draining and/or filling the swimming pool is not detrimental to the pond water quality or to any adjacent habitat areas.

7800. OPEN SPACE RESIDENTIAL DEVELOPMENT (OSRD). This section is established to permit variation in development styles and minimize the impacts of development while providing efficient provision of roads and utilities and to preserve open space in perpetuity for the protection of natural resources, the character of existing land by a special permit from the Planning Board.

7810. Application. An open space residential development is permitted in the District on upon issuance of a special permit from the Planning Board in accordance with Section 1330 of this Zoning By-law and Section 4400 through Section 4448 and upon issuance of definitive subdivision approval. The applications for a special permit and definitive subdivision approval shall proceed concurrently.

7820. Number of Dwelling Units. In addition to the provisions of Section 4441 of this Zoning By-law, the total number of residential units allowed within an open space residential district shall not exceed the number of units that would be allowed as demonstrated by the submission of an engineered plan of a conventional grid subdivision that conforms to the dimensional requirements of Section 7200 and the requirements of the most recent edition of the Sandwich Planning Board's Subdivision Rules & Regulations.

7821. Preservation Zone Transfer of Development Rights. The allowed number of dwelling units (density) in an OSRD may include the number of units that could be constructed in any Preservation Zone depicted on the District map. The calculation for the applicable number of dwelling units shall be made in accordance with Section 7830. This number of units transferred to adjacent property shall be under the same ownership.

- a. No development shall take place within a Preservation Zone.
- b. The density allowed in the OSRD shall be calculated as the sum of the number of dwelling units transferred from a specifically described portion of a Preservation Zone plus the number of dwelling units allowed on the parcel(s) to be developed.
- c. Land that is the subject of a permanent conservation restriction or that has been dedicated as open space by any special permit or Development of Regional Impact decision shall not be used in the density calculation/transfer of development rights calculation.
- d. In no case shall the total density of any development in the District increase over the total allowed as demonstrated by an engineered plan of a conventional grid subdivision for all parcels included in the density calculation/transfer of development rights according to the dimensional requirements of Section 7200 and the requirements of the most recent edition of the Sandwich Planning Board's Subdivision Rules & Regulations.

7830. Dimensional Requirements. OSRD lot coverage, yard, frontage, and lot area regulations shall be as follows in lieu of Section 7200:

Minimum Lot Area	5,000 SF
Minimum Frontage	25 feet
Maximum Frontage	100 feet
Minimum Front Yard Setback	10 feet
Minimum Side and Rear Yard Setback	0 feet
Maximum Lot Coverage:	
Lot area – 5000 – 10000 SF	80 %
Lot area – 10001 – 20000 SF	70%
Lot area – 20001 – 30000 SF	60%
Lot area – 30001 – 1 acre	50%

7840. Permitted Uses. The following uses are permitted in an open space residential development:

- a. Single Family Dwelling: Detached, single family dwellings.
- b. Uses and structures accessory to single family homes including a duly permitted wastewater treatment facility.
- c. Open Space: Common open space, restricted in perpetuity.
- d. Recreational Facilities; Recreational facilities and activities for the exclusive use by the residents of the open space residential development.
- e. Commercial Uses: One commercial structure in OSRD's of 50 acres or more in size is allowed by special permit in conjunction with the construction of single or multi-family homes. Such structures shall house only the following uses: a general store that provides groceries, conveniences, sundries, mail center, indoor automatic teller machines, or a combination of these uses. All other commercial uses shall be prohibited. If a use proposed for such commercial structures is expected to generate traffic of more than 300 vehicle trips per day, such use shall be prohibited. Any such commercial structure shall have a maximum square footage of 800SF including all storage areas. Basement areas of the commercial structure may also be used for storage. Public use of basement areas is prohibited. Additionally, a second or third story for such structures may be allowed but shall be dedicated solely to residential use. The architecture of such a commercial structure shall be compatible with the architecture of the area and shall be designed to blend with the OSRD and the surrounding community. A maximum of 6 parking spaces (as defined in the Definition Section of this Zoning By-law) including employee parking and delivery areas may be constructed and shall be located entirely to the rear of the structure. Provisions for on street parking are encouraged. Lighting shall follow the requirements of Section 3470 of this Zoning By-law. Signage shall be limited to two signs per structure with a total area of 16SF painted to blend with the surrounding landscape and architecture.

7850. Waste Water. The OSRD shall comply with the provisions of 310 CMR 15.00 of the State Environmental Code (Title V), as amended, and the onsite wastewater disposal regulations of the Board of Health, as amended, including regulations for the design, operation, and maintenance of small wastewater treatment facilities. Based upon the recommendation of the Board of Health pursuant to Massachusetts General Law Chapter 41, Section 81U, OSRD lots may be developed utilizing a shared waste water system subject to under 310 C.M.R. 15.00 of the State Environmental Code and the wastewater Disposal Regulations of the Board of Health for the Design, Operation and Maintenance of Small Wastewater Treatment Facilities and subject to the following conditions and limitations which apply in addition to the provisions of Article V of this by-law.

- a. Any such wastewater system shall comply with all other provisions of this Article and the Zoning By- law.
- b. The concentration of nitrate resulting from such wastewater disposal system shall not exceed five (5) parts per million (PPM).

7860. Common Open Space. Within an OSRD the balance of the area requirement for lot size shall be provided in common open space, designated as an open space lot or lots on the definitive subdivision plan. Common open space shall be maintained in an open and natural condition, without clearing, in its natural condition for the protection of habitat. The open space shall be used, designed and maintained in accordance with the following standards:

- a. Purposes: Open space shall be used solely for recreation, conservation, or agricultural purposes by residents of the OSRD and/or the public. A minimum of 80% of the open space shall be left in the undisturbed, natural state existing at the time of the submission of the plan. In no case shall any land within the Preservation Zone be disturbed for any purpose. The proposed use of the open space shall be specified in the application and depicted on the plan. The Planning Board shall reserve the authority to approve or disapprove use(s) proposed for designated open space.
- b. Recreation lands: Where appropriate to the topography and natural features of the site, the Planning Board may require that 10% of the open space or two acres, whichever is less, shall be of a shape, slope, location and condition to provide an informal field for group recreation or community gardens for the residents of the OSRD.
- c. Leaching Facilities: Subject to the approval of the Board of Health, as otherwise required by law, the Planning Board may permit a portion of the open space to be used for components of sewage disposal systems serving the

OSRD only, where the Planning Board finds that such use will not be detrimental to the character, quality or the use of open space, wetlands, surface water, or rare and endangered species habitat. The Planning Board shall require adequate legal safeguards and covenants that such facilities shall be adequately maintained by the landowners in the OSRD.

d. Accessory Structures: Up to 5% of the open space may be set aside and designated to allow for the construction of structures and facilities accessory to the proposed use of the open space. The portion of the open space shall be calculated using the definition of maximum lot coverage in Section 7020.

7870. Common Open Space Ownership and Management. The Applicant for the approval of an OSRD special permit shall demonstrate to the Planning Board ownership and control of the open space as specified in the Cluster Special Permit Regulations of the Planning Board.

7900. APPLICATION PROCEDURES.

7910. Pre-Application Review. To promote better communication and avoid misunderstanding, applicants are encouraged to submit preliminary materials for informal review by the SPGA and the Director of Planning & Development before filing a formal application.

7920. Submission. Proposed Open Space Residential Developments shall comply with the "Cluster Development Special Permit Regulations" of the Sandwich Planning Board. In the case of an application to amend an existing Cluster Special Permit, the procedures in Section 4440 through Section 4448 inclusive shall apply, except as to such materials as the Planning Board may waive as duplicative of materials previously submitted. In the event that the above referenced sections conflict with any portion of this Zoning By-law, the more restrictive provision shall apply.

7930. Requirements. In addition to the provisions of this Article and the Zoning By-law, the OSRD shall comply with the "Cluster Development Special Permit Regulations" of the Sandwich Planning Board and M.G.L. Chapter 40A, §9.

7940. Open Space Residential Development Criteria for Approval. Approval of an Open Space Residential Development may be granted upon a determination by the Planning Board that the plan complies with all of the requirements of this Article, the other provisions of this Zoning By-law, the Planning Board's Regulations, and that the proposed plan meets or exceeds the following criteria:

- a. Preserves open space for conservation, recreation and the protection of the resources within the District;
- b. Utilizes, preserves and enhances the natural features of the land in the District;
- c. Provides the most efficient arrangement of streets, utilities and other public services in the District;
- d. Minimizes to the greatest extent possible the impacts of development upon the natural features and resources of the District;
- e. Enhances the character of the District by preserving scenic vistas, limiting traffic impacts, limiting the height of structures to the height of existing tree canopy and using building materials that blend with existing structures and the surrounding area; and
- f. Preserves, improves or enhances the surface water quality of the District.

7990. Other Conditions. The SPGA may require the applicant to provide or pay for engineering services, including but not limited to the following: evaluation of submitted proposals; natural resources inventory; evaluation of potential impacts to surface and ground water quality and any other reasonable evaluation for which the SPGA or town staff is not professionally qualified to conduct.

8000. Medical Marijuana Overlay District.

8001. Purpose. The purpose of this Section is to provide for the placement of a Registered Marijuana Dispensary (RMD) in accordance with the Humanitarian Medical Use of Marijuana at GL c 94C, App. S1-1 et seq., in a location suitable for a lawful medical marijuana facility and to minimize adverse impacts of a RMD on adjacent properties, residential neighborhoods, and locations where minors congregate by regulating the siting, design, placement, security and removal of a RMD.

Where not expressly defined in the Zoning Bylaw, terms herein shall be interpreted as defined in the Humanitarian Medical Use of Marijuana Act G.L. c 94C. App. S 1-1, et seq. and the Department of Public Health (DPH) Regulations promulgated thereunder, 105CMR 725, et seq., and otherwise by their plain language.

8002. Overlay District. The Medical Marijuana Overlay District (MMOD) is hereby established as an overlay district. The boundaries of the MMOD are shown on the Zoning Map on file with the Town Clerk. If the provisions of the MMOD are silent on a zoning regulation, the requirements of the underlying district shall apply. If the provisions of the MMOD conflict with the requirements of the underlying district, the requirements of the MMOD shall control. Land within the MMOD may be used for either:

1. A Registered Marijuana Dispensary (RMD) in which case the requirements set forth in this Section shall apply; or
2. A use allowed in the underlying district in which case the requirements of the underlying district shall apply.

8003. Location.

1. The MMOD overlay is located in the B-2 medical campus area along Route 130 in Sandwich between the Massachusetts Military Reservation, the Route 6 Mid-Cape Highway and the Sandwich Industrial Park as shown on the zoning map on file with the Town Clerk. This location is suitable because it is highly visible with direct access to state highways and byways, easy access for public and emergency services, and relatively central location within the community. The overlay district also share proximity with other medical uses within this campus area.
2. A RMD shall not be located within 500 feet of any of the following facilities that are in existence at the time of permit application:
 - a. School, including a public or private elementary, vocational or secondary school or a public or private college, junior college or university;
 - b. Child Care Center as defined in MGL Chapter 15D Section 1A;
 - c. Public park; or
 - d. Any facility where the primary purpose is to serve persons under age 18 who commonly congregate to participate in scheduled and structured activities other than medical uses.
3. Measurement of distance for the purpose of this bylaw shall be measured from property line to property line. The Zoning Board of Appeals may waive this distance requirement by a supermajority vote as part of the issuance of a Special Permit in any of the following instances:
 - a. Renewal of a Special Permit for an existing RMD; or
 - b. New application (change of applicant) for an existing RMD; or
 - c. If the applicant demonstrates that a RMD would otherwise be effectively prohibited within the Town;
 - d. The applicant demonstrates that the RMD will employ adequate security measures to prevent diversion of medical marijuana to minors who are not qualifying patients pursuant to 105 CMR 725.004.

8004. Eligibility.

1. Only one RMD shall be permitted within the Town. As defined in Section 10.2 a RMD can either dispense, prepare, cultivate or any combination thereof. Therefore, any facility with one or a combination of these activities constitutes a RMD.
2. Only an applicant holding a valid Provisional Certificate of Registration from the Department of Public Health is eligible to apply for a Special Permit under this Section.

8005. Administration and Procedure.

1. One RMD shall be permitted in the MMOD pursuant to a Special Permit. The Zoning Board of Appeals shall be the Special Permit Granting Authority (SPGA) for a RMD Special Permit. In addition to the RMD Special Permit, applicants are urged to attend a voluntary town staff Site Plan Review.
2. The Zoning Board of Appeals shall notify and refer copies of RMD applications to the appropriate Town officials, such as Police Department, Fire Department, Building Commissioner, Town Engineer, Highway Superintendent, Health Department, Water Department, and Council on Aging, who have expertise or responsibilities relating to the application or serve constituencies likely to use a RMD. These reviewers may examine the application and submit written comments to the Zoning Board of Appeals. Failure to submit written comments by the designated deadline shall be construed as a lack of opposition to the proposal.
3. Applicants for a RMD Special Permit shall follow the application requirements on forms provided by the Zoning Board of Appeals or their designee.
 - a. An applicant for a Special Permit to operate a RMD under this bylaw shall submit the following to the Zoning Board of Appeals for its review:
 - 1) A copy of its Provisional Certificate of Registration from the Massachusetts Department of Public Health (DPH);
 - 2) A copy of any waivers of DPH regulations issued to the RMD;
 - 3) A full description of all security measures including employee security policies approved by the DPH;
 - 4) A copy of the emergency procedures approved by the DPH;
 - 5) A copy of the policies and procedures for patient or personal caregiver home delivery approved by DPH;
 - 6) A copy of the policies and procedures for the transfer, acquisition or sale of marijuana between RMDs as approved by the DPH; and
 - 7) A security contingency plan to address emergency situations and conditions presented by emergencies such as extended power outage and natural disasters.

b. The site plan shall clearly delineate various areas of the RMD (both indoors and outdoors) including but not limited to as public access areas, employee-only access areas, storage, cultivation, preparation, waste disposal, administrative, transportation and loading as well as parking areas. Site plans and/or application narrative shall contain sufficient information so that the Zoning Board of Appeals can evaluate the following design and operational standards.

4. Design Standards. The facility shall meet the following minimum requirements:

- a. All activities related to the RMD with regard to processing, cultivation, or storage of marijuana shall be conducted indoors. No materials, plants or byproducts shall be visible from outside of the premises/building. With the exception of loading areas, no operations shall be visible to the public;
- b. The facility may include waiting areas for patients and caretakers and areas where patients and caregivers receive instruction about use of the product and other activities directly related to administration of services. There shall not be any facilities for use by the general public such as public reception areas, public restrooms or public lounge or seating areas;
- c. All shipping and receiving areas shall exclusively serve the RMD. In the case of a multi-use or multi- tenant site, the RMD shall be laid out and designed to ensure separation from other uses or tenants at the site;
- d. The facility shall have adequate water supply, stormwater systems, sewage disposal, and surface and subsurface drainage;
- e. Adequate lighting, including night lighting that provides for monitoring of building and site security;
- f. Signage is limited to that which is permitted under 105 CMR 725.100 (L) and shall comply with the Town of Sandwich Sign Bylaw.

5. Security and Operational Standards.

- a. The Zoning Board of Appeals shall request review and comment from the Chief of Police or designee. Failure to submit written comments by a designated deadline set by the Zoning Board of Appeals shall be construed as a lack of opposition to the proposal. The Chief of Police or designee may recommend reasonable security conditions to the Board;
- b. The applicant under this Section shall provide and keep up to date contact information as required by the Chief of Police and Building Commissioner such as name, telephone number and electronic mail address of a contact person who must be available 24 hours a day.
- c. Security Design Requirements. At a minimum, the security features used to protect the site shall fully comply with 105 CMR 725 and, in addition, must have the following capabilities:
 - 1) A security camera system that monitors all entrances and exits for vehicles and persons as well as all areas where marijuana is received, stored, processed, sent or otherwise handled;
 - 2) The security camera system shall have a minimum 180 day storage capacity;
 - 3) Access and egress to all entrances and exits for vehicles and persons into areas where marijuana is received, stored, processed, sent or otherwise handled shall be controlled by an electronic access security system that records the ingress and egress of vehicles and persons;
 - 4) All personnel shall have a security identity card that includes a front facial picture of the employee. The identity card shall also serve as the electronic access card for entrance into all restricted areas. The date and time of all access and egress into such areas shall be digitally recorded. Identification cards shall be worn at all times when personnel are in the RMD facility and must be plainly visible and not concealed;
 - 5) All security alarm systems for the RMD shall be monitored by central station alarm. The Sandwich Police Department shall be immediately notified of the receipt of any alarm by the central station monitor; and
 - 6) The applicant shall immediately notify the Sandwich Police Department of any breakdown or malfunction of any part of the security system. This notification shall include at a minimum the following:
 - Date and time of malfunction;
 - Nature of malfunction;
 - Any loss or attempted loss of product as a result of the malfunction;
 - The compensatory measures in place to address the discontinuity of the security system; and
 - Estimated date and time of restoration of the security measures.

6. Enforcement

- a. Failure to comply with any of the provisions of the security measures in this Section shall be reported to the Building Commissioner for review. The applicant's unwillingness or inability to make timely repairs to the security systems may result in the issuance of a Cease and Desist order until such repairs have been completed and approved by appropriate town officials.

8006. Special Permit Approval Criteria and Conditions.

1. The Zoning Board of Appeals may impose reasonable conditions to improve site design, traffic flow, public safety, water quality, air quality, protection of significant environmental resources and the preservation of community character of the surrounding area including but not limited to the following:
 - a. Minimize the impacts of increased noise and traffic;
 - b. Impose security precautions related to the high value of products and cash transactions;
 - c. Deter unauthorized or ineligible customers at the RMD;
 - d. Impose measures to prevent diversion of marijuana; and
 - e. Conditions related to the design and construction of the facility to improve safety, security and conformance with community character.
2. Zoning Board of Appeals shall address the following general conditions in each special permit issued under this Section:
 - a. Hours of operation, including dispatch for home delivery;
 - b. The reporting of any incidents to the Building Commissioner and Zoning Board of Appeals as required under the requirements of 105CMR 725.110(f) within 24 hours of occurrence. Such reports may be redacted as necessary to comply with any applicable state or federal laws and regulations.
 - c. The reporting of any summary cease and desist order, quarantine order, summary suspension order, limiting sales order, notice of hearing or final action by DPH or the Division of Administrative Law Appeals as applicable regarding the RMD to the Building Commissioner and the Zoning Board of Appeals within 48 hours of their receipt.
3. A Special Permit may be issued to any applicant who, in the determination of the Zoning Board of Appeals, has met the requirements of this Section; as well as the criteria in Sections 1330 and 1340.
4. The issuance of a special permit under this Section shall also be subject to the following:
 - a. The special permit shall expire within five (5) years of the date of issue. If the applicant wishes to renew the special permit, an application to renew must be submitted at least 120 days prior to the expiration of the Special Permit;
 - b. Special permits shall be limited to the current applicant and shall expire on the date the Special Permit holder ceases operation of the RMD;
 - c. Special permits shall lapse upon the expiration or termination of an applicant's registration by DPH;
 - d. The holder of a special permit for an RMD facility shall notify the Building Inspector and the Zoning Board of Appeals in writing within 48 hours of the cessation of operation of the RMD or the expiration or termination of the permit holder's registration with DPH; and
 - e. Any failure to fully comply with any conditions of the special permit, this or any bylaws of the Town of Sandwich, or the laws or regulations of the Commonwealth of Massachusetts, may result in the suspension or revocation of the special permit by the Zoning Board of Appeals.

8007. Prohibition Against Nuisances.

No use shall be allowed in the MMOD which creates a nuisance to abutters or to the surrounding area, or which creates any hazard, including but not limited to fire, explosion, fumes, gas, smoke, odors, obnoxious dust, vapors, offensive noise or vibration, flashes, glare, objectionable effluent or electrical interference, which may impair the normal use and peaceful enjoyment of any property, structure or dwelling in that area.

8008. Severability.

The provisions of the Bylaw are severable. The invalidity of any Section or provision of this Zoning Bylaw shall not invalidate any other Section or provision hereof.

8050. Marijuana Establishments

Consistent with G.L. c.94G,§3(a)(2), all types of non-medical "marijuana establishments" as defined in G.L. c.94G,§1, to include marijuana cultivators, independent testing laboratory, marijuana product manufacturers, marijuana retailers or any other types of licensed marijuana-related businesses, shall be prohibited within the Town of Sandwich.

8100. Municipal Reuse Overlay District – Purpose

The purpose of this overlay district is to allow for reuse of municipal properties that no longer serve the originally intended purpose. This zoning district provides zoning flexibility to allow for this redevelopment, while also allowing for the preservation of open space on adjoining Town-owned land. Given the historic nature of Sandwich, many Town buildings and lands are now encompassed by uses that have been developed over the past several decades and the buildings, specifically, might not be congruent with surrounding uses. When Town buildings and lands no longer serve a municipal purpose this section envisions a process and zoning to allow for reuse, either by a public or private entity, which will best serve the community but will minimize impacts to surrounding neighborhoods.

8110. Location

The Municipal Reuse Overlay District is herein established as an overlay district and shall be superimposed on other districts established in this Zoning By-law. A plan entitled "Municipal Reuse Overlay District" prepared by Town of Sandwich and dated August 3, 2017 is on file in the Planning & Development Office. The plan delineates the district and is hereby made a part of this By-law.

8115. Definitions

Adult Retirement Development – see Zoning By-law Section 7020

Assisted Living Facility - see Zoning By-law Section 7020

Co-working / cooperative office – work space leased at short term intervals and includes shared space, private space, and group space plus typical office equipment like printer, copier, fax, etc. May include kitchenette for preparation of personal meals but not for commercial meal preparation.

8120. Special Permit Filing Requirements

The issuance of any special permit for any use or structure in the District shall be governed by the requirements of this Bylaw and by the requirements and procedures set forth under Sections 1330 through 1370 of this Zoning By-law. In the event of a conflict between these provisions, the stricter provisions shall be applied. The SPGA is authorized, upon receipt of a written request, to waive specific submission requirements of Sections 1330 through Sections 1370 if the SPGA deems a particular requirement to be duplicative or unnecessary. The Special Permit Granting Authority for this overlay district is the Zoning Board of Appeals.

8130. Dimensional Requirements and Allowed Uses

8131. The following dimensional requirements are applicable to the overlay district:

- Minimum lot size – 5 acres
- Minimum lot frontage – 150 feet
- Minimum front yard – 30 feet
- Minimum side & rear yard – 25 feet
- Maximum lot coverage – not to exceed existing lot coverage percentage
- Maximum building height – Any newly-constructed structures may not exceed the maximum building height set forth in Section 2600 except by special permit from the Zoning Board of Appeals.
- Maximum shape factor – 22

8132. The following uses are allowed by-right in the overlay district:

- Residential – multi-family*
- Municipal

8133. The following uses are allowed by special permit in the overlay district:

- Office
- Co-Working/Cooperative Office
- Artist Studios
- Museum
- Assisted Living Facility
- Continuing Care Retirement Community (CCRC)
- Adult Retirement Development
- Childcare Facility
- Nursing Home, Convalescent Home, Hospice Care
- Adult Day Care
- Cultural Facility

*Residential density for an all-residential development is 10 units per acre. Residential density for mixed-use development with two levels of residential units is 6.5 units per acre or 3.5 units if one level. No rounding of partial units will be allowed. If the number of multi-family dwelling units allowed on a lot exceeds 10, there shall be two separate points of access and egress supplied. The location of these shall comply with the dimensional requirements for separation and visibility of Section 3140 of these by-laws. These access roads shall be interconnected on the lot so as not to form separate dead ends.

8140. Conditions

The Zoning Board of Appeals may impose reasonable conditions, safeguards and limitations on time or use of any special permit granted.

8150. Severability

The provisions of this Bylaw are severable. The invalidity of any Section or provision of this Zoning Bylaw shall not invalidate any other Section or provision hereof.

ARTICLE VIII**TEMPORARY MORATORIUM ON RECREATIONAL MARIJUANA ESTABLISHMENTS****Purpose**

On November 8, 2016, the voters of the Commonwealth approved a law regulating the cultivation, processing, distribution, possession and use of marijuana for recreational purposes (new G.L. c. 94G, Regulation of the Use and Distribution of Marijuana Not Medically Prescribed). The law, which allows certain personal use and possession of marijuana, took effect on December 15, 2016 and (as amended on December 30, 2016; Chapter 351 of the Acts of 2016) requires a Cannabis Control Commission to issue regulations regarding the licensing of commercial activities by March 15, 2018 and to begin accepting applications for licenses on April 1, 2018. Currently under the Zoning Bylaw, a non-medical Marijuana Establishment (hereinafter, a "Recreational Marijuana Establishment"), as defined in G.L. c. 94G, §1, is not specifically addressed in the Zoning Bylaw. Regulations to be promulgated by the Cannabis Control Commission may provide guidance on certain aspects of local regulation of Recreational Marijuana Establishments. The regulation of recreational marijuana raises novel legal, planning, and public safety issues, and the Town needs time to study and consider the regulation of Recreational Marijuana Establishments and address such issues, as well as to address the potential impact of the State regulations on local zoning and to undertake a planning process to consider amending the Zoning Bylaw regarding regulation of Recreational Marijuana Establishments. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Recreational Marijuana Establishments so as to allow sufficient time to address the effects of such structures and uses in the Town and to enact bylaws in a consistent manner.

Definition

"Recreational Marijuana Establishment" shall mean a "marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business."

Temporary Moratorium

For the reasons set forth above and notwithstanding any other provision of the Zoning Bylaw to the contrary, the Town hereby adopts a temporary moratorium on the use of land or structures for a Recreational Marijuana Establishment and other uses related to recreational marijuana. The moratorium shall be in effect through June 30, 2018 or until such time as the Town adopts Zoning Bylaw amendments that regulate Recreational Marijuana Establishments, whichever occurs earlier. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of recreational marijuana in the Town, and to consider the Cannabis Control Commission regulations regarding Recreational Marijuana Establishments, and shall consider adopting new Zoning Bylaws in response to these new issues.

DEFINITIONS

In this bylaw the following terms, unless a contrary meaning is required by the context or is specifically prescribed, shall have the following meanings. Words used in the present tense include the future, and plural includes the singular; the word "lot" includes the word "plot"; the word "building" includes the word "structure"; the word "shall" is intended to be mandatory; "occupied" or "used" shall be considered as though followed by the words "or intended, arranged or designed to be used or occupied." The word "person" includes a corporation as well as an individual.

ACCESSORY BUILDING OR USE - A building or use customarily incidental to and located on the same lot with the principal building or use, except that if more than thirty (30) percent of the lot area is occupied by such use, it shall no longer be considered accessory.

BY-RIGHT ACCESSORY APARTMENT - A unit no more than 800 square feet in size, specifically providing supplemental living space to the primary residence on a lot.

ACCESSORY DWELLING UNIT - A dwelling unit with the purpose of promoting affordable housing in the Town for year-round residents that is no larger than 1,000 square feet in size or thirty percent if the gross square footage of a principal dwelling, whichever is smaller.

ANIMAL RESCUE/ ADOPTION - A public animal control facility or other facility which is operated by an organization or individual for the purpose of protecting animals from cruelty, neglect or abuse.

APIARIES- Beehives and associated facilities in place recreationally or professionally for the purposes of producing honey, wax and any other associated product resulting from the practice of beekeeping.

AGRICULTURE - As defined by Massachusetts General Law Chapter 128, Section 1A. "Farming" or "agriculture" shall include farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market.

AQUACULTURE- The sustainable farming or raising of shellfish, mollusks, crustaceans or fish in local town marine and fresh waters meant for distribution and consumption, as per Commonwealth of Massachusetts laws and regulations.

ARTERIAL STREET - Any state numbered highway, plus the following named streets: Beale Avenue, Chase Road, Farmersville Road, Great Hill Road, Mid-Cape Service Road, Newtown Road, Race Lane, Quaker Meetinghouse Road, Sandwich-Cotuit Road, Snake Pond Road.

ARTIST STUDIOS - Space explicitly for the purpose of the design and production of artwork including but not limited to; paintings, sculpture, glasswork, etc. and all accessory hardware, tools and structures to support such production hitherto.

BED & BREAKFAST – An owner-occupied dwelling for the rooming and boarding of guests. Food or beverage shall only be served to those who let a room in such a dwelling. A Bed & Breakfast shall not be considered a Home Occupation. A Bed & Breakfast shall require a special permit from the Zoning Board of Appeals. A Bed & Breakfast shall only be allowed as indicated in section 2200.

BEDROOM - Any habitable room in a dwelling, if such room exceeds sixty (60) square feet, other than a living room, dining room, kitchen, utility room, or bathroom. Any dwelling unit in which no such room exists shall be construed to contain one bedroom.

BOAT AND WATERCRAFT STORAGE BUILDING - A structure used for indoor storage of boat and watercraft. The storage of hazardous materials greater than those quantities normally associated with household use is prohibited in such structures.

BORDERING - As defined under the Wetlands Act (G.L. Chapter 131, Section 40) shall include any land within either of the following:

- a) 100 feet horizontally landward from the bank of any beach, dune, flat, marsh, meadow or swamp bordering the ocean, estuary, creek, river, stream, pond, lake, freshwater wetland or coastal wetland.
- b) 100 feet horizontally landward from the water elevation of the 100-year storm or whatever is the greater distance of (a) or (b).

BORDERING VEGETATED WETLAND (BVW) - A vegetation community where fifty (50) percent of the vegetation consists of wetland plant species, identified in the Wetlands Protection Act (MGL Chapter 131, Section 40), which borders a wetland resource area or watercourse defined by the Wetlands Protection Act (MGL Chapter 130, Section 140, 310 CMR~ 10.00), the Town of Sandwich Wetlands Bylaw and its regulations. The upland boundary of the BVW is established at the line, within which fifty (50) percent or more of the vegetation community consists of wetland plant species identified in the Act. (Added STM94)

BULK STORAGE - Exposed outside storage of sand, lumber, coal, or bulk materials, bulk storage of liquids in tanks except underground as an accessory use.

CAMPER - A portable dwelling, eligible to be registered and insured for highway use, designated to be used for travel, recreational and vacation uses, but not for permanent residence. Includes equipment commonly called travel trailers, pick-up coaches, or campers, motorized campers, and tent trailers, but not mobile homes.

CAMPGROUND - Premises used for travel trailers, campers, tenting or for temporary seasonal overnight facilities of any kind where a fee is charged.

CAMPING SUPERVISED - Facilities operated on a seasonal basis for continuing supervised recreational, health, educational, religious, and/or athletic programs, with persons enrolled for periods of not less than one week, and with a group dining if overnight accommodations are included.

CINEMA - An auditorium facility with one or more viewing rooms for the primary purpose of showing films to the public for a fee.

CHILDCARE FACILITY - A business falling under the classification of center and school based early education and care program by the Commonwealth of Massachusetts Executive Office of Education's regulations.

CLUSTER DEVELOPMENT - A development under the provisions of Section 4400.

COLLECTOR STREET - Any street, which meets or has met all of the design and construction standards for a Collector Street contained in the Subdivision Control Regulations of the Sandwich Planning Board.

COMMERCIAL MARINE FISHING EQUIPMENT STORAGE – Storage of a boat, boat trailer and/or equipment necessary to a commercial marine fishing business. If stored outdoors such items shall not be stored less than 25 feet from any front lot line and not less than 10 feet from any side or rear lot line. No stored boat shall be used for dwelling or sleeping purposes.

COMMERCIAL RADIO TOWER - deleted ATM 5/4/98

COMMON DRIVEWAY – An alternative means of access for no more than three single-family dwellings on no more than two separate lots as may be allowed by Special Permit Section 4140 of the by-law. Common driveways are not streets and do not provide lot frontage.

CONSTRUCTION TRAILER - A temporary and mobile commercial trailer with the sole purpose of housing office operations of a future or current construction project that is removed within six months of project completion.

CONTINUING CARE RETIREMENT COMMUNITY – A Continuing Care Retirement Community (“CCRC”) is a facility or group of facilities which offers several levels of assistance, including independent living, assisted living, congregate care, and/or skilled nursing care.

CONTRACTOR'S YARD - A lot with or without structures in the Industrial District used by an individual building contractor or subcontractor for storage of equipment, supplies, and sub-assemblies, or parking of wheeled equipment. (Amended 1/14/08)

CONVALESCENT HOME - An establishment providing housing and general care for the aged, or the convalescent. Convalescent Home as set forth in Chapter 111 Section 71 of the Massachusetts General Law is hereby incorporated by reference.

COTTAGE COLONY - Two or more detached seasonal dwellings located on the same lot, each designed for independent family living and including cooking facilities. (Amended May 1, 1995)

CREMATORIUM - A facility with the sole purpose of incinerating human remains or pet remains as per Commonwealth of Massachusetts regulations.

DISPOSAL AREA - Premises, whether licensed or not, where waste or scrap articles or materials are abandoned or stored, sorted, packed, bought or sold, except where such activities are carried on entirely within an enclosed building.

DUNE, PRIMARY - A hill or ridge of sand piled up by the wind with no other dune between it and the oceanfront.

DWELLING - A building or part of a building used exclusively as the living quarters for one or more families.

DWELLING, SINGLE-FAMILY - One dwelling unit on a single lot irrespective of structure type, ownership or tenure. (Added STM 9/91)

DWELLING, TWO-FAMILY - Two dwelling units on a single lot irrespective of structure type, ownership or tenure. (Added STM 9/91)

DWELLING, MULTI-FAMILY - Three or more dwelling units on a single lot irrespective of structure type, ownership or tenure.

DWELLING UNIT - Living quarters for a single family and not more than two (2) boarders or lodgers, with cooking, living, sanitary, and sleeping facilities, independent of any other unit.

ELEVATION - Height relative to Mean Sea Level.

FAMILY - One or more persons, including domestic employees, occupying a dwelling unit and living as a single, non-profit housekeeping unit; provided that a group of six or more persons who are not within the second degree of kinship to each other, as defined by civil law, shall not be deemed to constitute a family.

FAMILY DAYCARE - Child and infant daycare operations classified as a Family Child Care operated within a residence as per Commonwealth of Massachusetts Executive Office of Education regulations.

FARM - Premises, including necessary structures and equipment, containing at least five acres, which are used for gain in the raising of agricultural products, or livestock, except horses (see stables).

FARM STAND - A permanent or temporary structure meant for the sole purpose of selling produce and other related agricultural offerings of local harvest falling into conformance with Massachusetts General Law Chapter 40A, Section 3.

FLOOR AREA - The sum of the gross horizontal area of the several floors of a building and its accessory buildings on the same lot, including the area of basements not more than fifty (50) percent below grade, roofed porches and roofed terraces, excluding areas with less than six feet floor to ceiling height. All dimensions shall be measured between exterior faces of walls.

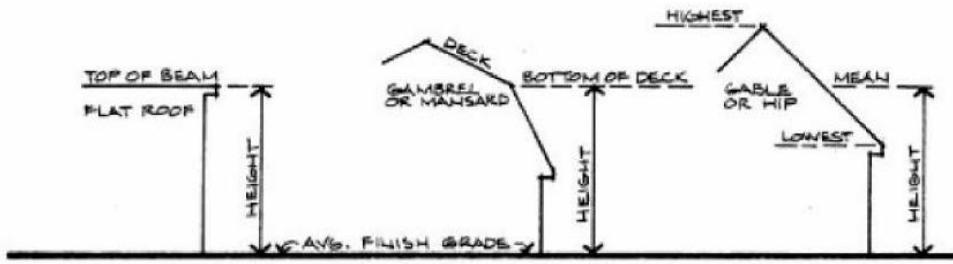
GAME ROOM - A commercial facility exclusively for playing of billiards, pool, darts and/or table games, but not including video games or pinball machines. (Added STM 11/18/97).

GARAGE - A building for the storing of motor vehicles.

GOLF COURSE, STANDARD OR PAR 3 - Course, including customary accessory buildings, where tee to hole distance averages not less than eighty (80) yards.

HEALTH CLUB - A facility with the purpose of offering physical exercise and sport activities with admission based on a fee structure. Accessory uses in addition, but not limited to exercise equipment, ball courts, swimming pools, steam rooms and locker or shower facilities may be included.

HEIGHT - The vertical distance from the mean existing grade at the front line of the building to the highest point of the roof for flat or shed roofs, to the deck line for mansard roofs and to the ridge for gable, hip and gambrel roofs; except for those buildings that are required to be placed on elevated foundations, specific to Federal and/or State flood elevation requirements, adjacent to the shoreline and/or within those areas designated by FEMA to be part of an A or V Zone, where the vertical distance would be measured from the top of the Federal and/or State required elevated foundation to the highest point of the roof for flat or shed roofs, to the deck line for mansard roofs and to the ridge for gable, hip and gambrel roofs. Not included are spires, cupolas, TV antennae and other parts of structures, which do not enclose potentially habitable floor space.



HOLIDAY OR SEASONAL ATTRACTION - A commercial venture with the purpose of attracting patrons to engage in or be entertained by attractions, spectacles, shows, or other similar activities specifically scheduled and suited to particular holidays or seasons of the year. Examples of such activities include, but are not limited to, haunted hayrides or haunted houses, corn, hay or other mazes, Christmas villages, Santa Claus workshops, etc. One-time events, festivals, carnivals and others similar shall be exempt

HOME OCCUPATION - A business or profession engaged in within a dwelling by a resident thereof as an accessory use of the dwelling. (Amended ATM 5/5/97).

HOSPICE CARE FACILITY - A facility dedicated to the service and enactment of care for patients seeking end of life treatment where minor medical procedures or care, counseling and housing are provided.

HOSPITAL, NURSING HOME, CONVALESCENT HOME - Premises licensed as such by the Massachusetts Department of Public Health under Section 51 or 71 of Chapter 111, Massachusetts General Law.

HOTEL - A building or group of buildings, whether detached or connected, each containing three or more rooming units. Each individual unit shall have its own sanitary facilities. A hotel may include such accessory uses as function rooms, health club, restaurants, swimming pools, and/or tennis courts.

KENNEL, COMMERCIAL BOARDING OR TRAINING - An establishment used for boarding, holding, day care, overnight stays or training of animals that are not the property of the owner of the establishment, at which such services are rendered in exchange for consideration and in the absence of the owner of any such animal; provided, however, that "commercial boarding or training kennel" shall not include an animal shelter or animal control facility, a pet shop licensed under section 39A of MGL chapter 129, a grooming facility operated solely for the purpose of grooming and not for overnight boarding or an individual who temporarily, and not in the normal course of business, boards or cares for animals owned by others.

KENNEL, COMMERCIAL BREEDER - An establishment, other than a personal kennel, engaged in the business of breeding animals for sale or exchange to wholesalers, brokers or pet shops in return for consideration.

KENNEL, PERSONAL - A pack or collection of more than 4 dogs, 3 months or older, owned or kept under single ownership, for private personal use; provided, however, that breeding of personally owned dogs may take place for the purpose of improving, exhibiting or showing the breed or for use in legal sporting activity or for other personal reasons; provided further, that selling, trading, bartering or distributing such breeding from a personal kennel shall be to other breeders or individuals by private sale only and not to wholesalers, brokers or pet shops, provided further, that a personal kennel shall not sell, trader, barter or distribute a dog not bred from its personally-owned dog; and provided further, that dogs temporarily housed at a personal kennel, in conjunction with an animal shelter or rescue registered with the department, may be sold, traded, bartered or distributed if the transfer is not for profit.

LANDSCAPED OPEN SPACE - Space not covered by any structure, and not used for drives, parking, utilities, or storage; comprising landscaped areas and outdoor recreational facilities, including those on balconies and roofs over structures, if so developed. Area shall be measured horizontally and not include any land with slope over twenty (20) percent, or any land under water other than swimming pool.

LANE - Any street which meets, or has met, the design and construction standards of a lane, contained in the Subdivision Control Regulations of the Sandwich Planning Board and, by its locations and design, may not be reasonably expected to service non-residential property, or serve as a means of access to more than ten (10) homes.

LARGE SCALE GROUND MOUNTED SOLAR PHOTOVOLTAIC INSTALLATION – A facility for the generation of electric power from sunlight where the collection systems are mounted on the ground and not on the roofs of structures. Ground mounted systems shall have a minimum rated capacity of 250kW individually.

LIVESTOCK OR FOWL - A fowl or other animal kept or propagated by the owner for food or as a means of livelihood, cow, bison, deer, elk, pig, boar, cottontail rabbit, northern hare, chicken, duck, goose, pheasant, quail, partridge and other birds and quadrupeds determined by the Massachusetts Department of Fisheries, Wildlife and Environmental Law Enforcement to be wild and kept by or under a permit from, the department in proper houses or suitable enclosed yards; provided, however, that "livestock or fowl" shall not include dog, cat or other pet.

LODGING HOUSE - A dwelling used for the taking of more than six (6) boarders or the renting of rooms, without cooking facilities, to more than six (6) and fewer than ten (10) persons, but not including buildings of charitable, educational, or philanthropic institutions.

LOT AREA - The horizontal area of a lot exclusive of any area in a street or way open to public use. All of the lot area used for zoning compliance shall be land other than that under water nine (9) months or more in a normal year, or considered as wetland resource area as defined in the Wetlands Protective Act, Chapter 131, Section 40 of MGL and subsequent regulations, 310 CMR 10.00, and no part of the lot area employed for zoning compliance shall be more distant from the street line than four (4) times the lot frontage.

LOT COVERAGE - Percentage of lot area that is covered by structures, paving, driveways, walkways and parking area.

LOT FRONTAGE - That portion of a lot fronting upon a street, measured continuously along the street sideline between side lot lines or, in the case of corner lots, between one side lot line and the midpoint of the corner radius. For lots on the outside of a curve whose radius is 120 feet or less, the lot frontage may be reduced at the street line to sixty (60) percent of the required lot frontage, provided that the full required frontage can be met at the front building line.

MAJOR COMMERCIAL COMPLEX - Facilities for retail trade or services containing more than 10,000 square feet gross floor area and more than one retail trade or service entity operating within the complex.

MARINE MEDICAL & REHABILITATION FACILITY - A facility that rescues, rehabilitates and then releases marine mammals and serves as an educational resource for studies in oceanic health and marine mammal care and medicine. (Added ATM94)

MEAN SEA LEVEL - The current Mean Sea Level Datum Plane established by the United States Geological Survey.

MEDICAL OFFICES - offices and clinics for medical or other health services for the examination and treatment of persons as outpatients, including laboratories that are part of such offices and clinics.

MINOR STREET - Any street, with the exception of those designated in these by-laws as Arterial or Collector Streets, which meets or has met all of the design and construction standards for a Minor Street contained in the Subdivision Control Regulations of the Sandwich Planning Board.

MOBILE HOME - A movable or portable dwelling built on a chassis, designed for connection to utilities when in use, and designed without necessity of a permanent foundation for year-round living.

MOBILE HOME PARK - Premises which have been planned and improved for the placement of mobile homes for year-round occupancy.

MOTEL - A building or a group of buildings, whether detached or connected, each containing three or more rooming units. Each rooming unit may include such accessory uses as swimming pools and tennis courts, and shall be no more than 480 square feet in size and no fewer than 225 square feet in size; and no structure shall be fewer than 20 feet from any other structures. The units shall be used, or designed to be used, as individual sleeping and dwelling units by transient travelers, tourists or vacationers. Each integral sleeping unit shall have its own attached sanitary facilities. A motel may include accessory uses such as a restaurant and other secondary facilities commonly associated with the operation of a motel.

MUSEUM - Premises of the procurement, care and display of inanimate objects of lasting interest and value.

MUNICIPAL USE – Any use of land or buildings owned or leased by the Town of Sandwich.

NURSING HOME - A residence equipped and staffed to provide care for the infirm, chronically ill, or disabled. A Nursing Home is hereby incorporated as set forth in Chapter 111, Section 71 of the Massachusetts General Laws.

OFFICE – Office and meeting space for conducting professional services, clerical or administrative work for occupations including but not limited to business, healthcare, not-for-profit organization and trades or for conducting a home occupation.

OTHER RETAIL BUSINESS OR SERVICE- An establishment selling or renting goods and services to the general public for personal and household consumption, including but not limited to florist, grocery, or hair styling; stores that offer the following items, including but not limited to antiques, apparel, appliances, art, candy, consignment goods, convenience, crafts, drugs, electronics, liquor, photo supplies, shoes, stationery, video and variety stores. A convenience store that sells gasoline and auto supplies but does not repair, service, or store vehicles shall be considered a retail business.

OUTDOOR RECREATION FACILITY – Small-scale community recreation and sports fields or facilities allowed by special permit under Section 4150.

PARKING SPACE - Space adequate to park an automobile, plus means of access. Where spaces are not marked, each space shall be assumed to require 350 square feet. Spaces to be not less than nine (9) feet wide or eighteen (18) feet long.

PHILANTHROPIC INSTITUTION - An endowed or charitably supported, nonprofit religious or non-sectarian activity maintained for public or semi-public use.

PLANNED UNIT DEVELOPMENT - deleted ATM 5/4/98

RECREATION FACILITY – Indoor or outdoor sports facilities or athletic clubs including but not limited to, playing fields, courts, pools or ice rinks, rock climbing walls, or other sports areas, spectator facilities and other structures accessory to general athletics and recreation.

REGIONAL SERVICE - Regional service generally denotes retail and professional/business service activities serving the resident population of Sandwich and the Upper Cape Region (Sandwich/Mashpee/Falmouth/Bourne).

REHABILITATION HOSPITAL – A hospital licensed pursuant to Massachusetts General Laws, Chapter 111, which provides hospital-level in-patient rehabilitation services, together with general and specialty out-patient rehabilitation services including but not limited to: aquatic therapy, cardiac rehabilitation, occupational therapy, physical therapy,

speech and language pathology, women's rehabilitative services, wellness, holistic medicine, sports medicine-adaptive sports, wound treatment, pain therapy, adult daycare, research and development related to rehabilitation, geriatric and elder care and day time veterinary rehabilitative services.

RESEARCH LABORATORY - Industrial or commercial experimentation, design, and production of prototypes, but exclusive of volume or continuous production.

RESIDENCE - The same as dwelling unit defined herein.

RESTAURANT – Any food service business serving the public on the premises and/or preparing food for takeout. (Added ATM 5/5/97)

RETAIL SALES/SERVICE, MAJOR - An establishment 2,500 square feet to 9,999 square feet selling or renting goods or providing services to the general public for personal and household consumption.

RETAIL SALES/SERVICE, MINOR - An establishment less than 2,500 square feet selling or renting goods or providing services to the general public for personal and household consumption.

RETAIL SALES/SERVICE, REGIONAL - An establishment 10,000 square feet or greater selling or renting goods or providing services to the general public for personal and household consumption.

ROOMING UNIT - A room or suite of rooms in a motel or lodging house suitable for separate rental.

SEASONAL/ SEASONAL USE - Prescribing to the traditional Cape Cod interpretation of Memorial Day until Labor Day as "height of season" with modern exception to include "Shoulder Seasons" in spring and autumn; thereby extending overall and official "Seasonal Use" or label of "Seasonal" from April 1st until October 31st.

SEASONAL DWELLING - A non-owner occupied dwelling that may not be occupied between October 31st and April 1st of a calendar year and where no lease or rent is permitted to last or extend for the full twelve months of the year, subscribing to the Town's definition of "Seasonal Use".

SHOOTING RANGE - An indoor facility or outdoor range(s) meeting the laws and regulations set forth by the Commonwealth of Massachusetts, Massachusetts Department of Public Safety and/ or Sandwich Police Department for the use of target practice, skeet shooting and other accessory activities with approved firearms including, but not limited to rifles, shotguns and handguns as well as bows and crossbows. No shooting range shall be less than 1,000 feet from a residence, commercial business, or other public gathering space.

SPA - A resort that provides services that enhance the health and wellbeing of its guests. Typical spa facilities provide: instruction in exercise, nutrition, general health and fitness; opportunities to access a wide variety of exercise equipment, body work therapists, swimming facilities, outdoor hiking trails and small scale outdoor recreation such as tennis courts, croquet courts etc., The spa may consist of a building or group of buildings, a portion thereof designed for serving food in a dining room and containing 15 or more sleeping rooms for overnight guests together with both the indoor and outdoor recreational facilities. Spa facilities shall be for the exclusive use of the spa's registered, overnight guests. Spa facilities shall not be used for functions attended by any person who is not a registered, overnight guest of the spa.

SPORTSMEN'S CLUB - A public or private club with the purpose of promoting or engaging in the shared interests of hunting, fishing, trapping, shooting and general outdoorsmen activities where accessory uses such as meeting halls, dining or club rooms, private viewing rooms and interior or exterior shooting ranges may be located.

STABLES - Premises used for the shelter and feeding of horses.

STREET, PUBLIC - An accepted Town way, or way established by or maintained under County, State or Federal authority, or a way established by a subdivision plan approved in accordance with the Subdivision Control Law, or a way certified by the Planning Board to have sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land and the buildings erected or to be erected thereon.

STREET, PRIVATE - A way other than a Public Street, having suitable width, grades and adequate construction to provide safe vehicular access by abutters and public safety vehicles and maintained privately.

STRUCTURE - Anything constructed or erected, the use of which requires fixed location on the ground, or attachment to something on the ground, including all buildings, mobile homes, billboards, towers, swimming pools or tanks that have a capacity of 4,000 gallons or more, or the like, or part thereof; but not including paving, usual lawn accessories, fences or retaining walls six (6) feet in height or less.

STORAGE, EXTERIOR – Temporary (no longer than six months) exterior storage units located outside a building including but not limited to “pods”, trailers, containers and the like which may house merchandise, furniture and more.

SWIMMING POOL - Any constructed pool, located above or below ground, whether portable or fixed, used or capable of being used for swimming, wading, or bathing purposes. Pools having a depth of two feet or more and having a capacity of 4,000 gallons or more in volume shall be considered structures.

TATTOO ESTABLISHMENT/ BODY ART ESTABLISHMENT - A location, place, or business where the practices of body art are performed either for profit or not for profit and as further defined by the Sandwich Board of Health Regulations.

TECHNOLOGY BUSINESS OR SERVICE - Such businesses or services include: communications; data warehousing of any media; sales, service, data collection, research, development, assembly and manufacture of communication products, information service products and other electronic technology based business or service.

THEATRE - A venue with the purpose of hosting staged theater productions, musical concerts, comedy shows, films or film festivals, speeches or debates and other events qualifying as entertainment, educational or informative that require seating for large audiences.

TOXIC OR HAZARDOUS MATERIALS - Any substance or mixture of such physical, chemical or infectious characteristics as to pose a significant, actual or potential hazard to water supplies, or other hazard to human health, if such substance or mixture were discharged to land or waters of this Town. Toxic or hazardous materials include, without limitation, organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and include products such as pesticides, herbicides, solvents and thinners.

Waste generated by the following activities, without limitation, are presumed to be toxic or hazardous, unless and except to the extent that anyone engaging in such an activity can demonstrate the contrary to the satisfaction of the Board of Appeals:

- Airplane, boat and motor vehicle service and repair.
- Chemical and bacteriological laboratory operation.
- Cabinet making.
- Dry cleaning.
- Electronic circuit assembly.
- Metal plating, finishing and polishing.
- Motor and machinery service and assembly.
- Painting, wood preserving and furniture stripping.
- Pesticide and herbicide storage.
- Photographic processing.
- Printing.

WASTEWATER TREATMENT FACILITY – A public or private facility constructed to treat wastewater, not including the disposal of treated effluent.

WASTEWATER EFFLUENT DISPOSAL – The disposal of treated effluent from a public or private wastewater treatment facility.

WHOLESALE AND RETAIL WAREHOUSE - one building on one lot occupied by one business for the sole purpose of selling goods or merchandise to both retail and wholesale customers. (ST 92)

YARD - A required open space, unobstructed with structures other than fences or other customary yard accessories

YARD, FRONT - A yard extending between lot sidelines across the front of a lot adjacent to the street it abuts. A front yard shall be defined as the yard space bordering the adjoining street where the lot's address is derived from.

YARD, SIDE - A yard extending from the rear line of the required front yard to the rear lot line adjacent to the lot sideline.

YARD, REAR - A yard extending across the rear of the lot between the inner side yard lines.